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The **NORTH CAROLINA REGISTER**

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ISSUE DATE: NOVEMBER 15, 1990

Volume 5 • Issue 16 • Pages 1010-1059



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue number and date. **1:1 NCR 101-201, April 1, 1988** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1988.

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North Carolina Administrative Code. Published in looseleaf notebooks with supplement service by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions seven hundred and fifty dollars (\$750.00). Individual volumes available.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(April 1990 - December 1991)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90
06/01/90	05/10/90	05/17/90	07/01/90	10/01/90
06/15/90	05/24/90	06/01/90	07/15/90	10/01/90
07/02/90	06/11/90	06/18/90	08/01/90	11/01/90
07/16/90	06/22/90	06/29/90	08/15/90	11/01/90
08/01/90	07/11/90	07/18/90	08/31/90	12/01/90
08/15/90	07/25/90	08/01/90	09/14/90	12/01/90
09/04/90	08/13/90	08/20/90	10/04/90	01/01/91
09/14/90	08/24/90	08/31/90	10/14/90	01/01/91
10/01/90	09/10/90	09/17/90	10/31/90	02/01/91
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01/02/91	12/07/90	12/14/90	02/01/91	05/01/91
01/15/91	12/20/90	12/31/90	02/14/91	05/01/91
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02/15/91	01/25/91	02/01/91	03/17/91	06/01/91
03/01/91	02/08/91	02/15/91	03/31/91	07/01/91
03/15/91	02/22/91	03/01/91	04/14/91	07/01/91
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04/15/91	03/22/91	04/01/91	05/15/91	08/01/91
05/01/91	04/10/91	04/17/91	05/31/91	09/01/91
05/15/91	04/24/91	05/01/91	06/14/91	09/01/91
06/03/91	05/10/91	05/17/91	07/03/91	10/01/91
06/14/91	05/23/91	05/31/91	07/14/91	10/01/91
07/01/91	06/10/91	06/17/91	07/31/91	11/01/91
07/15/91	06/21/91	06/28/91	08/14/91	11/01/91
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08/15/91	07/25/91	08/01/91	09/14/91	12/01/91
09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
09/16/91	08/23/91	08/30/91	10/16/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
10/15/91	09/24/91	10/01/91	11/14/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
11/15/91	10/24/91	10/31/91	12/15/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92
12/16/91	11/21/91	12/02/91	01/15/92	04/01/92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

**EXECUTIVE ORDER NUMBER 127
AMENDMENT AND EXTENSION OF
EXECUTIVE ORDER NUMBER 1
ESTABLISHING THE NORTH CAROLINA
BOARD OF ETHICS**

By the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

Executive Order Number 1, establishing the North Carolina Board of Ethics, as amended by Executive Order Number 30 and extended by Executive Orders Number 33 and 82, is hereby amended to include all members of boards,

commissions, and councils within the executive branch that exercise the sovereignty of the State and/or advise the heads of principal departments, irrespective of appointing authority. No appointee to a commission, board, or council subject to this order shall be permitted to participate in any official matters until he or she has filed a Statement of Economic Interest with the North Carolina Board of Ethics.

Executive Order Number 1 is hereby extended for a period of 5 years from this date.

Done in Raleigh, North Carolina, this the 29th day of October, 1990.

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:GS:DOW:rac
DJ 166-012-3
AI928
AK480; AK958
AK623; AK959

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

October 15, 1990

Jesse L. Warren, Esq.
City Attorney
P.O. Drawer W-2
Greensboro, North Carolina 27402

Dear Mr. Warren:

This refers to the three annexations [Ordinance Nos. 90-104, 90-115 and 90-120] and the designation of two of the annexed areas to District 3 for the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submissions on August 16 and September 25 and 27, 1990.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

U.S. Department of Justice
Civil Rights Division

JRD:GS:TGL:mrj
DJ 166-012-3
AJ602

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

October 25, 1990

Robert C. Cogswell, Jr., Esq.
City Attorney
P.O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to the salary increase for the mayor, the mayor pro tem and councilmembers of the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 5, 1990.

The Attorney General does not interpose any objection to the specified change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Department of Economic and Community Development intends to amend rules cited as 4 NCAC 12C .0004 - .0006.

The proposed effective date of this action is April 1, 1991.

The public hearing will be conducted at 10:00 a.m. on January 9, 1991 at the Dobbs Building, 430 North Salisbury Street, Room 1120B, Raleigh, North Carolina 27611.

Comment Procedures: Written comments concerning these proposed amendments must be submitted by December 27, 1990, to:

*Energy Division
North Carolina Department of Economic and
Community Development
430 North Salisbury Street
Raleigh, North Carolina 27611
Attn: Chris Mogensén*

Oral comments may be presented at the public hearing but may be limited at the discretion of the hearing officer. Submittal of written copies of verbal statements is encouraged.

CHAPTER 12 - ENERGY

SUBCHAPTER 12C - ORGANIZATION

.0004 DEFINITIONS

The following definitions apply to this Chapter:

- (1) "End-user" means any firm which is an ultimate consumer of an allocated product other than a whole sale purchaser-consumer.
- (5) "State set-aside" is that amount of an allocated ~~petroleum~~ product made available from the total supply of a prime supplier for utilization by the state to resolve emergencies and hardships due to ~~fuel~~ shortages.
- (6) "~~Base period volume~~" is that amount of ~~product used by an end-user, or wholesale purchaser-consumer during a designated time period.~~ "Base Period" shall be the 12 month period immediately preceding the months in which an applicant applies for state set-aside product, or such other time as may be determined by the Energy Division in the event that the 12 month base period is not applicable.

- (8) "~~Hardship~~" means a situation involving or potentially involving substantial discomfort or danger and or economic dislocation, caused by a shortage of an allocated substance. "Hardship" exists when a wholesale purchaser-consumer or end-user is adversely affected by his inability to obtain a sufficient quantity of an allocated product.
- (10) "Market area" means a one mile radius around a retail sales outlet selling ~~gasoline and diesel fuel.~~ an allocated product. [This definition may be used as a factor for determining an applicant's eligibility for state set-aside fuel if no other retail sales outlet is within this radius to serve customers.]
- (11) "Customer supplier relationship" will exist between an end-user, wholesale purchaser-consumer or wholesale purchaser-reseller and a supplier has after a business relationship has existed for a 30-day period.
- (12) "Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, federal government, state and local governments and any other instrumentalities.
- (13) "Agricultural production" means all activities classified under the industry code numbers specified in Subparagraph (a) of this Paragraph, as set forth in the Standard Industrial Classification Manual, latest edition, except those industry code numbers listed in Subparagraph (b) of this Paragraph, which are excluded:
 - (a) Activities:
 - (i) All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in Subparagraph (b) of this Paragraph;
 - (ii) All industry code numbers included in Major Group 20 and 21, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in Subparagraph (b) of this Paragraph; and
 - (iii) All the following other industry code numbers:
 - (A) 1474 Potash, Soda and Borate Minerals (Potash mining only);
 - (B) 1475 Phosphate Rock;
 - (C) 2141 Tobacco Stemming and Drying;
 - (D) 2411 Logging Camps and Logging Contractors;
 - (E) 2819 Industrial Inorganic Chemicals not elsewhere classified (dicalcium phosphate only);

- (F) 2873 Nitrogenous Fertilizers;
- (G) 2874 Phosphatic Fertilizers;
- (H) 2875 Fertilizers, Mixing Only;
- (I) 2879 Pesticides and Agricultural Chemicals not elsewhere classified;
- (J) 4212 Local Trucking Without Storage (farm to market hauling and log trucking only);
- (K) 4971 Irrigation Systems (for farm use); and
- (L) 5462 Retail Bakeries, Baking and Selling.
- (b) Activities excluded:
 - (i) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:
 - (A) 0181 Ornamental Floriculture and Nursery Products;
 - (B) 0271 Fur-Bearing Animals and Rabbits (except rabbit farms);
 - (C) 0272 Horses and Other Equines;
 - (D) 0279 Animal Specialties not elsewhere classified (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);
 - (E) 0742 Veterinary Services for Animal Specialties;
 - (F) 0752 Animal Specialty Services;
 - (G) 0781 Landscape Counseling and Planning;
 - (H) 0782 Lawn and Garden Services;
 - (I) 0783 Ornamental Shrub and Tree Services; and
 - (J) 0849 Gathering of Forest Products, not elsewhere classified.
 - (ii) All the following industry code numbers, otherwise listed under Major Groups 20, Food and Kindred Products, of Division D, Manufacturing, are excluded from the definition:
 - (A) 2047 Dog, Cat and Other Pet Food;
 - (B) 2067 Chewing Gum;
 - (C) 2084 Wines, Brandy, and Brandy Spirits; and
 - (D) 2085 Distilled, Rectified and Blended Liquors.
- (14) "Emergency Services" means law enforcement, fire lighting and emergency medical/ambulance services.
- (15) "Energy Production" means the exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production,

such as pipelines, mining equipment and similar capital goods.

- (16) "Sanitation Services" means the collection and disposal of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.
- (17) "Telecommunication Services" means the emergency or essential installation, repair, operation and maintenance of voice, data, telegraph, video and similar communications services to the public by a communications common carrier, excluding sales and administrative activities.
- (18) "Passenger Transportation Services" means publicly and privately owned air and surface operations for transporting members of the general public, bus transportation of pupils to and from school (but not including elective extra-curricular activities), and vanpool operations, and includes facilities necessary to support such operations.
- (19) "Truck" means a motor vehicle for transportation with a gross weight in excess of 20,000 pounds.
- (20) "Health Service Facilities" means hospitals, psychiatric facility, rehabilitation facility, long-term care facility, kidney disease treatment center, intermediate care facility for mentally retarded, home health agency, chemical dependence treatment facility and ambulatory surgical facility.

Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449.

.0005 FORMS

(a) The following forms are used by the Energy Division and may be obtained from the main office at 430 North Salisbury Street, Raleigh, North Carolina, or from a local County Emergency Preparedness Coordinator:

- (1) NC-ED-100 ("Application to State for Exceptional Hardship Assistance"). This form is used by applicants for state set-aside products. It contains questions concerning the nature of the applicant's hardship, the quantity of product needed, the storage capacity of the applicant and the name of the applicant's suppliers.
- (2) FEO-17 ("Request for Assignment of a Supplier or Adjustment of Base Period Supply Volume"). This federal form is required by the U.S. Department of Energy to be filed whenever an application is made

for an assignment or adjustment of a base period volume. It is also required by the state to be filed with Form NC-ED-100 whenever an application is made for state set-aside. It contains questions about the storage capacity and current inventory of the applicant, the names and addresses of the applicant's suppliers or potential suppliers and whether the product is to be purchased for end use or resale. NC-ED-21 ("North Carolina Action on Application for Exceptional Hardship Assistance"). This form shall be issued by the Energy Division as an authorizing and or denial document in response to an NC-ED-100 request for state set-aside assistance. An approval document shall entitle the bearer to receive product from the assigned supplier within ten days of issuance.

(2) FFA-25 ("Certification of Requirements for Use Under Allocation Levels Not Subject to An Allocation Fraction"). This form provides the means for a wholesale purchaser-reseller to certify to its own supplier(s) the current requirements, not subject to an allocation fraction, of end-users and wholesale purchaser-consumers which it supplies directly.

(b) The Energy Division may from time-to-time require additional information to be submitted on forms to be provided by the Energy Division without the requirement for revisions to this Chapter.

Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449.

0006 SCOPE AND PURPOSE OF STATE SET-ASIDE

(a) Control of certain petroleum products, as may from time-to-time be designated by the federal government, is assigned to the state by the United States Department of Energy. The products are to be allocated by the state for the purpose of alleviating hardships and or emergencies within the state. A hardship and or emergency exists when a wholesale purchaser-consumer or end-user is adversely affected by his inability to obtain a sufficient quantity of the product. Issuance of the state set-aside, based upon proof of hardship and or emergency will follow the priority rules and any special rule as set forth in the United States Department of Energy regulations. this Chapter or issued by the Energy Division. The application must clearly set forth the consequences which will result from one or more end-users not being able to obtain sufficient product. The following

are examples of consequences which could result from one or more end-users not being able to obtain sufficient products. Such examples of consequence as filed by the applicant may include, but are not limited to:

- (1) plant closings,
- (2) employee lay-offs,
- (3) inability to harvest crops, or
- (4) curtailments of vital community services.

(b) The state set-aside may be used for:

- (1) end-users and wholesale purchaser-consumers who are unable to obtain adequate petroleum products and thereby sustain a hardship or emergency as defined in this Chapter,
- (2) wholesale purchaser-resellers seeking an assignment to meet an emergency or hardship requirement on behalf of end-users and wholesale purchaser-consumers.

(c) Allocations granted under the state set-aside program must be used to supply wholesale purchaser-consumers and end-users described in the application for state set-aside.

(d) Who May Apply for State Set-Aside. Any wholesale-purchaser consumer or wholesale-purchaser reseller may apply for, or on behalf of, end-users who are eligible under Paragraphs (b)(1) and (2) of this Rule.

(e) First priority for set-aside shall go to wholesale purchaser-consumers and end-users involved in the following activities (order of priority to be determined by the Energy Division after review of the circumstances then in effect):

- (1) agricultural production;
- (2) aviation ground support vehicles and equipment;
- (3) cargo, freight and mail hauling by truck and mail carries;
- (4) emergency services;
- (5) energy production;
- (6) health care services;
- (7) passenger transportation services;
- (8) sanitation services;
- (9) telecommunication services.

(1) (d) What Must Be Filed for State Set-Aside. All applications must be filed on a Form NC-ED-100, "Application to State for Exceptional Hardship Assistance." and must be accompanied or preceded by a current Form FFO-17 if the product is under federal regulation. Any information submitted on the above-listed forms which the applicant desires to be treated as confidential must be designated as such on the form and a second form (copy) must be filed deleting the information considered confidential by the applicant. The Energy Division, N.C. Department of Economic and Community Development may issue and revise guidelines for

administration of the State Set-Aside Program, including information to be included when completing the form NC-ED-100 and such other forms as it may determine to be necessary to the proper administration of the State Set-Aside Program, without the requirement for revisions to this Chapter. The following information may be required to be included on all application forms when applying for hardship assistance under the state set-aside:

- (1) name of applicant;
- (2) address of applicant, including city, county, state and zip code;
- (3) telephone number of applicant;
- (4) type of fuel;
- (5) period (month) for which requested;
- (6) allocations for the current month:
 - (A) name of supplier;
 - (B) quantity;
 - (C) allocation fraction;
 - (D) total contract allocation volume;
- (7) DOE base period allocation as adjusted (current month);
- (8) additional quantity required for hardship or emergency cases;
- (9) storage capacity of applicant;
- (10) current inventory;
- (11) if and when Forms FEO-17 or FEA-25 were completed and submitted;
- (12) full explanation of the nature of end-use hardships;
- (13) certification of requirements for the month, broken down by end use and fuel categories;
- (14) if the applicant is a wholesale purchaser-reseller, a description of the wholesale purchaser-consumers and end-users who will be supplied.

(g) ~~(e)~~ Where to File an Application for State Set-Aside:

- (1) All applications [except those listed in Paragraph (g) (2) and (3), of this Rule], must should be filed with the local County Emergency Management Coordinator and are processed through the North Carolina Department of Commerce, Economic and Community Development, Energy Division, P.O. Box 25249, Raleigh, North Carolina 27611.
- (2) In the event the applicant's county of domicile does not have a County Emergency Management Coordinator assigned, applications may be filed directly with the Energy Division.
- (3) The Energy Division may, from time-to-time, designate other applicants which will file applications for state set-aside product

directly with the Energy Division without the need for revisions to this Chapter.

(h) ~~(2)~~ Request for Confidential Treatment

- (1) ~~(A)~~ If any person filing a document with the local County Emergency Management Coordinator or the Energy Division claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirement of the Freedom of Information Act [5 U.S.C. 552 (1970)], or is otherwise exempt by law from public disclosure, and if such person requests the local County Emergency Management Coordinator and the Energy Division not to disclose such information, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the Energy Division may assume that there is no objection to public disclosure of the document in its entirety.

- (2) ~~(B)~~ The Energy Division retains the right to make its own determination with regard to any claim of confidentiality. Should the Energy Division deny a claim to confidentiality, the applicant may require the return of all copies of the disputed document(s) with notification to the applicant that the withdrawal of necessary data from consideration may tend to prejudice his application pending before the Energy Division.

(i) ~~(F)~~ Limitations on Filing an Application for State Set-Aside. Applications must be filed within the month the hardship exists and should be filed with the local County Emergency Management Coordinator not later than the 15th day of the month for which set-aside product is requested. The State Emergency Management System will ensure that applications are received

by the Energy Division not later than five working ten calendar days before the end of the month. In cases where additional information is requested, this information must be received by the local County Emergency Management Coordinator and forwarded to the Energy Division prior to the last working day of the month. five calendar days before the end of the month. In cases of disapproval, the applicant will be notified within ten days as to why his application was not approved.

(j) Release of set-aside product. The Energy Division, upon determining to its satisfaction that there will be little or no need for any set-aside product not allocated, may release the remainder to the suppliers for distribution through their normal North Carolina distribution channels.

(k) Supplier's Responsibilities:

(1) Each prime supplier shall designate a representative to act for and in behalf of the prime supplier with respect to state set-aside assignments. The Energy Division may, to the maximum extent possible, consult with the prime supplier's representative prior to issuing any authorizing documents affecting the state set-aside volumes to be provided by the supplier.

(2) Suppliers shall provide the assigned amount of an allocated product to an applicant when presented with an authorizing document. The authorizing document shall entitle the applicant to receive product from any convenient local distributor of the prime supplier from which the state set-aside assignment has been made.

All prime suppliers shall supply products from their state set-aside volume each month, as directed by the Energy Division, not to exceed the total state set-aside volume for each product for that month. That portion of a prime supplier's state set-aside volume for a particular month which is not allocated by the Energy Division during that month, or which is not subject to an authorizing document issued no later than the last day of that month, shall become a part of the prime supplier's total supply for the subsequent month and shall be distributed according to the allocation procedure set forth in the allocation regulations. The Energy Division may designate certain geographical areas within the state as suffering from an intra-state supply imbalance. When this occurs the Energy Division may order some, or all, of the prime suppliers servicing the geographical areas to release part, or all, of their set-aside volume through their normal distribution systems to increase the fuel supply of their customers. Orders issued pursuant to the set-

aside program shall be in writing and effective immediately upon presentation to the prime supplier's designated state representative. Such order shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

(l) (g) Procedures for Appeal:

(1) Whenever the rights, duties, or privileges of the applicant or other substantially affected persons are being determined by the administration of the state set-aside, within the Energy Division, through the granting or denial of a hardship application, such person(s) may, within ~~15~~ ten days of service of the order, file a written request for an appointment with the ~~allocations officer.~~ Director of the Energy Division. Such request(s) must be sent to the Director, Energy Division, North Carolina Department of ~~Commerce, Economic and Community Development,~~ 430 N. Salisbury St., Raleigh, North Carolina 27611.

(2) At the meeting, the aggrieved party may informally review the application and have answered questions concerning the application as may be permitted without violating a confidentiality claim.

(3) ~~If, after meeting with the allocations officer,~~ or a representative of the allocations officer, the aggrieved party continues to be dissatisfied with the disposition of the application, the aggrieved party may, within 10 days of that meeting, file a written request for a hearing with the Director of the Energy Division. Such a request must be sent to the above address. The aggrieved party and other parties of record will be promptly notified as to the time and place his hearing will be held. The Director of the Energy Division shall have five working days from the date of the meeting to arrive at a decision.

(4) All appeals from the decision of the Director of the Energy Division rest with the Secretary of the Department of ~~Commerce~~ Economic and Community Development or his designee as provided for under Chapter 1 of this Title.

(5) At the time of a final decision by the Departmental secretary, the Departmental appeals procedures will have been deemed exhausted. Any further appeals shall be made directly to either the Wake County Superior Court or the North Carolina Court of Appeals, as appropriate, as the

~~court of original jurisdiction, by petition to the Office of Administrative Hearings.~~

(6) Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies may petition either the Superior Court of Wake County or the Superior Court of the county where the person resides.

(7) ~~(6)~~ Nothing in this Rule shall preclude an application from reapplying for an allocation in lieu of pursuing the appeals process.

Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50B .0407.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 1:30 p.m. on December 14, 1990 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning this proposed amendment must be submitted by December 14, 1990, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0400 - BUDGETING PRINCIPALS

.0407 PATIENT LIABILITY

(f) The amount deducted from income for unmet medical needs shall be determined as follows:

(1) Unmet medical needs shall be the costs of:

(A) Medical care covered by the program but that exceeds limits on coverage of that

care and that is not subject to payment by a third party;

(B) Medical care recognized under State and Federal tax law that is not covered by the program and that is not subject to payment by a third party; and

(C) Medicare and other health insurance premiums, deductibles, or coinsurance charges that are not subject to payment by a third party.

(2) ~~The monthly amount of unmet medical needs deducted from monthly income shall be the total of the following:~~

~~(A) Monthly charges for Medicare and other health insurance premiums;~~

~~(B) Estimated monthly cost of other recurring unmet medical needs. This estimate shall be made in accordance with Federal regulations.~~

The amount of unmet medical needs deducted from the patient's monthly income shall be limited to monthly charges for Medicare and other health insurance premiums.

(3) ~~Unmet medical needs that occur only one time shall be deducted when they are incurred. The actual amount of incurred costs which are the patient's responsibility shall be deducted when reported from the patient's liability for one or more months.~~

(4) ~~Following the certification period for which recurring unmet medical needs were estimated, the difference between the total amount of estimated unmet medical needs and the actual amount of unmet medical needs incurred during that period shall be resolved as follows:~~

~~(A) If the estimated amount of unmet medical needs exceeds the actual amount of unmet medical needs by more than five dollars (\$5.00) per month, the difference shall be added to income when determining patient liability for the earliest possible month for which patient liability can be increased in accordance with advance notice requirements at 10 NCAC 50A .0302;~~

~~(B) If the estimated amount of unmet medical needs is less than the actual amount of unmet medical needs by more than five dollars (\$5.00) per month, the difference shall be deducted from income when determining patient liability for the month or months following the month in which resolution is calculated.~~

Incurred costs shall be reported by the end of the six month Medicaid certification period following the certification period in which they were incurred.

Authority G.S. 108A-54; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 U.S.C. 1396r-5.

**TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0312.

The proposed effective date of this action is August 1, 1991.

The public hearing will be conducted at 7:00 p.m. on January 24, 1991 at the E.W. Summersill Building (new County Courthouse), Courtroom 1, 109 Old Bridge Road, Jacksonville, NC.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented verbally at the hearing. Verbal statements may be limited at the discretion of the hearing officer. Submittal of written copies of verbal statements is encouraged. For more information, contact Suzanne H. Keen, Division of Environmental Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-5083.

**CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT**

**SUBCHAPTER 2B - SURFACE WATER
STANDARDS: MONITORING**

**SECTION .0300 - ASSIGNMENT OF STREAM
CLASSIFICATIONS**

.0312 WHITE OAK RIVER BASIN

(b) The White Oak River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) December 13, 1979;
- (2) June 1, 1988;
- (3) January 1, 1990;
- (4) August 1, 1990;
- (5) August 1, 1991.

(d) The Schedule of Classifications and Water Quality Standards for the White Oak River Basin was amended effective August 1, 1991 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the New River

Drainage Area above a line running across the New River from Grey Point to a point of land approximately 2,200 yards downstream of the mouth of Duck Creek.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rules cited as 15A NCAC 2D .1104.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 7:00 p.m. on December 18, 1990 at the Groundfloor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths to five minutes if many people want to speak. The record of proceedings will remain open until December 28, 1990 to receive additional written statements. To be included, the statement must be received by the Department by December 28, 1990.

Additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thomas C. Allen
Division of Environmental Management
P. O. Box 27687
Raleigh, North Carolina 27611-7687
(919) 733-3340

**SUBCHAPTER 2D - AIR POLLUTION
CONTROL REQUIREMENTS**

**SECTION .1100 - CONTROL OF TOXIC AIR
POLLUTANTS**

.1104 TOXIC AIR POLLUTANT GUIDELINES

(b) A facility shall not emit after May 1, 1991, any of the following toxic air pollutants in such quantities that may cause or contribute beyond the premises to any significant ambient air concentration that may adversely affect human

health. In determining these significant ambient air concentrations, the division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure:

	Annual (Carcinogens)
(1) acrylonitrile	1.5×10^{-4}
(2) ammonium chromate	8.3×10^{-8}
(3) ammonium dichromate	8.3×10^{-8}
(4) benzene	1.2×10^{-4}
(5) (4) 1,3-butadiene	1.7×10^{-4}
(6) (5) calcium chromate	8.3×10^{-8}
(7) (6) carbon tetrachloride	6.7×10^{-3}
(8) (7) chloroform	4.3×10^{-3}
(9) (8) chromic acid	8.3×10^{-8}
(10) (9) chromium (VI)	8.3×10^{-8}
(11) (10) ethylene oxide	2.7×10^{-5}
(12) (11) lithium chromate	8.3×10^{-8}
(13) (12) methylene chloride	2.4×10^{-2}
(14) (13) perchloroethylene	1.9×10^{-1}
(15) (14) potassium chromate	8.3×10^{-8}
(16) (15) potassium dichromate	8.3×10^{-8}
(17) (16) sodium chromate	8.3×10^{-8}
(18) (17) sodium dichromate	8.3×10^{-8}
(19) (18) strontium chromate	8.3×10^{-8}
(20) (19) tetrachlorodibenzo-p-dioxin	3.0×10^{-9}
(21) (20) trichloroethylene	5.9×10^{-2}

(c) A facility shall not emit after May 1, 1992, benzene in such quantities that may cause or contribute beyond the premises to any significant ambient air concentration that may adversely affect human health. In determining the significant ambient air concentration for benzene, the Division shall be guided by the following acceptable ambient level: 1.2×10^{-4} milligrams per cubic meter annual average at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3), (4), (5); 143B-282.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to adopt rule(s) cited as 15A NCAC 10A .1001; and amend rule(s) cited as 15A NCAC 10B .0118; 10F .0302; 10H .0806 - .0809; 10I .0003 - .0005.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 10:00 a.m. on December 14, 1990 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 30, 1990 to December 28, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION

SECTION .1000 - WARNING TICKETS

.1001 PARTICULAR OFFENSES

(a) Warning Tickets Prohibited. Wildlife Enforcement Officers shall not issue warning tickets for the following offenses, classes of offenses or offenses committed in a particular manner:

- (1) second offense of a similar charge;
- (2) hunting, fishing, or trapping without a license, except as listed in this Rule;
- (3) exceeding bag or creel limits;
- (4) take fish or wildlife by use of poison, explosives, or electricity;
- (5) hunting, fishing, or trapping in closed season;
- (6) hunting on Game Lands during closed days;
- (7) firelighting deer;
- (8) unlawfully take or possess antlerless deer;
- (9) unlawfully take or possess bear or wild turkey;
- (10) unlawful purchase or sale of wildlife;
- (11) unlawful taking of fox; or
- (12) taking wildlife with the aid of or from a motor vehicle or boat under power or while in motion.

(b) Warning Tickets Permitted. Wildlife Enforcement Officers may issue warning tickets for the following offenses:

- (1) Boating Violations:
 - (A) number missing, lack of contrast, not properly spaced or less than three inches in height;
 - (B) no validation decal affixed or incorrect placement;
 - (C) fire extinguisher not charged or non-approved;

- (D) no fire extinguisher on boats with false bottoms not completely sealed to hull or filled with flotation material;
 - (E) fail to notify North Carolina Wildlife Resources Commission of change of address of boat owner;
 - (F) personal flotation device not Coast Guard approved;
 - (G) failure to display navigation lights when there is evidence that lights malfunctioned while underway;
 - (H) no sound device (on Class 1 boats only);
 - (I) muffler not adequate;
 - (J) loaded firearm on access area;
 - (K) parking on access area in other than designated parking area, provided traffic to ramp not impeded;
 - (L) violation of more than three offenses (motorboat cases only) issue one citation on the two most serious violations and a warning ticket on the lesser charge(s); or
 - (M) motorboat registration expired ten days or less.
- (2) License Violations:
- (A) persons under 16 hunting, trapping, or trout fishing without meeting statutory requirements;
 - (B) senior citizens hunting or fishing without valid license(s) (Senior citizens are those persons 65 years old or older);
 - (C) when it appears evident that the wrong license was purchased or issued by mistake;
 - (D) failure to carry required license or identification on person, if positive identification can be established;
 - (E) non-resident hunting, fishing, or trapping with resident license, if domicile is established, but not 60 days; or
 - (F) hunting, fishing, or trapping on Game Lands or fishing in Designated Trout Waters that are not properly posted or have only very recently been posted (30 days grace period).
- (3) Game Lands Violations:
- (A) camp on Game Lands in other than designated area; or
 - (B) possess weapons readily available for use while on game land thoroughfare, during closed season.
- (4) Trapping Violations:
- (A) improper chain length at dry land sets;
 - (B) trap tag not legible;
 - (C) trap tag missing, but with a group of properly tagged traps;
 - (D) trap tag missing, but evidence that animal destroyed;
 - (E) improper jawsize;
 - (F) failure to comply with "offset" jaw requirement for traps with jaw spread of more than 5½ inches;
 - (G) failure to attend traps daily, during severe weather (ice, high water, heavy snow); or
 - (H) no written permission, but on right-of-way of public road.
- (5) Miscellaneous Violations:
- (A) allow dogs not under the control of the owner to chase deer during closed season;
 - (B) attempt to take deer with dogs, or allow dogs to chase deer in restricted areas;
 - (C) use dogs to track wounded deer during primitive weapon season;
 - (D) failure to report big game kill to nearest cooperators agent, when game is tagged and subject is enroute to another agent;
 - (E) training dogs or permitting them to run unleashed on Game Lands west of I-95 during the period of April 1 through August 15;
 - (F) violation of newly adopted regulations, when not readily available to the public;
 - (G) violation of local laws, when information not available to the public;
 - (H) all permits (except for fox depredation permit);
 - (I) closed season, if misprinted in digest or suddenly changed;
 - (J) minor record violation (taxidermist); or
 - (K) failure to put name and address on marker (trothline).
- (c) Special Consideration. Special consideration may be given in local areas where the offender is hunting or fishing out of his normal locality and is unfamiliar with the local law. Consideration may also be given for minor violations on newly opened or established Game Lands and on reclassified or newly Designated Mountain Trout Waters. Special consideration may be given to youthful offenders under 18 years of age.

Statutory Authority G.S. 113-140.

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0118 SALE OF WILDLIFE

(a) The carcasses or pelts of bobcats, opossums and raccoon which have been lawfully taken by any hunting method, upon compliance with applicable fur tagging requirements set forth in 15A NCAC 10B .0400, may be sold to licensed fur dealers. The sale of carcasses or pelts of bobcats,

opossum and raccoon killed accidentally or taken by hunting for control of depredations is permitted under the conditions set forth in 15A NCAC 10B .0106(d)(4).

(b) Except as otherwise provided in Paragraph (a) of this Rule, the sale of game birds and game animals or parts thereof is prohibited, except that processed products other than those made from edible portions made from lawfully acquired game birds or game animals which are not readily identifiable as game birds or game animals or parts thereof may be sold provided that no label or advertisement identifies the product as a game bird, ~~or~~ game animal, or part thereof and provided further that the game bird or game animal was lawfully acquired and the product is not readily identifiable as a game bird or game animal, or part thereof.

(c) The sale of edible portions or products of game birds and game animals is prohibited, except as may be otherwise provided by statute.

Statutory Authority G.S. 113-134; 113-273; 113-291.3.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0302 ATLANTIC BEACH

(a) Regulated Areas. This Rule applies to the waters of the canals within the subdivisions of Atlantic Beach Isles and Sound View Isles following waters within the town limits of Atlantic Beach:

- (1) the waters of the canals within Atlantic Beach Isles subdivision;
- (2) the waters of the canals within Sound View Isles subdivision;
- (3) the waters of Iloop Pole Creek from a point near the east end of the peninsula at the entrance to Iloop Pole Creek on Bogue Sound in a westerly direction to Lee Drive as designated by appropriate markers.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas identified in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Town of Atlantic Beach is designated as a suitable agency for placement and maintenance of the markers implementing this Rule. subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Statutory Authority G.S. 75A-3; 75A-15.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0800 - FALCONRY

.0806 CONDITIONS OF PERMIT

Every falconry permit shall be issued subject to the following special conditions:

- (1) A permittee may not take, transport or possess a golden eagle (*Aquila chrysaetos*) unless authorized in writing by the U.S. Fish and Wildlife Service.
- (2) A permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within the state and no money or other consideration is involved. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of the commission is obtained and no money or other consideration is involved in the transaction. A permittee must report all acquisitions and dispositions of raptors to the U.S. Fish and Wildlife Service on forms supplied by the Commission. A permittee may purchase, sell or barter any lawfully possessed raptor which is bred in captivity under a federal raptor propagation permit and banded with a numbered seamless marker provided by the U.S. Fish and Wildlife Service, provided:
 - (a) the person receiving such raptor is authorized to possess it under this Section, ~~of or~~ 50 CFR 21, or the foreign country of his residence or domicile in accordance with 50 CFR 21.28(c)(2)(iii)(A); and
 - (b) The permittee transferring such raptor has acquired it from a person authorized to possess it as provided by the Subparagraph (a) of this Paragraph.
- (3) A permittee may not take, possess, or transport a raptor in violation of the restrictions, conditions, and requirements of the federal and state falconry regulations.
- (4) By July 31 of each year, a permittee shall submit to the commission a falconry report containing the following:
 - (a) a listing of all raptors in his possession on June 30 of the year in which the report is filed by species, marker number, sex (if known), age (if known), and date and where or from whom acquired;
 - (b) a list of all raptors possessed or acquired since the previous annual report, but no longer possessed, by species, marker number, sex (if known), age (if known), date and where or from whom acquired, and to whom given, or whether escaped;

died or released, and when the event occurred;

- (c) ~~any other information required by the commission.~~
- (4) ~~(5)~~ The falconry seasons and the daily, possession and season bag limits are contained in 15A NCAC 10B .0216.
- (5) ~~(6)~~ A permittee must have his permit in possession at all times when raptor trapping devices or raptors are in his possession away from his residence.
- (6) ~~(7)~~ In addition to criminal penalties for violations provided by federal and state statutes, permits are subject to suspension or revocation in accordance with applicable law.

Authority G.S. 113-134; 113-270.3; 113-270.3(b)(5); 50 C.F.R. 21.28; 50 C.F.R. 21.29.

.0807 CLASSES OF PERMITS

(a) Apprentice Class. Apprentice class falconry permits are subject to the following conditions, requirements and limitations:

- (1) The permittee must be at least 14 years old.
- (2) Regardless of the age of the permittee, the apprentice must have a sponsor who is a holder of a general or master falconry permit for the period ~~first two years~~ during which the apprentice permit is held. The sponsor must be a North Carolina resident or must live within 200 miles of the apprentice. A sponsor may not have more than three apprentices at any one time. A sponsor must provide written justification to the Commission when he decides to drop an apprentice. The Commission will notify the apprentice who must obtain another sponsor and so advise the Commission within 90 days. After this 90 day period, the apprentice's raptors may be seized by the Commission and the permit revoked. Re-application and testing will be required after the passage of 180 days.
- (3) The permittee may not possess more than one raptor and may not obtain more than one raptor for replacement during any period of 12 months.
- (4) The permittee may possess only the following raptors which must be taken from the wild: an American kestrel (*Falco sparverius*), a red-tailed hawk (*Buteo jamaicensis*), or a red-shouldered hawk (*Buteo lineatus*).

(b) General Class. General class falconry permits are subject to the following requirements and limitations:

- (1) The permittee must be at least 18 years old.
- (2) The permittee shall have at least two years experience in the practice of falconry at the apprentice level or its equivalent. The permittee's apprentice sponsor must provide written certification of the falconer's skills on forms supplied by the Commission.
- (3) The permittee may not possess more than two raptors and may not obtain more than two raptors for replacement during any period of 12 months.
- (4) The permittee may not take, transport, or possess any golden eagle or any species listed as endangered or threatened under the federal regulations, except as provided by the federal falconry regulations.

(c) Master Class. Master class falconry permits are subject to the following conditions and limitations:

- (1) The permittee must have at least five years experience in the practice of falconry at the general class level or its equivalent.
- (2) The permittee may not possess more than three raptors and may not obtain more than two raptors taken from the wild for replacement during any period of 12 months.
- (3) The permittee may not take, transport, or possess any golden eagle for falconry purposes unless authorized in writing by the U.S. Fish and Wildlife Service.
- (4) The permittee may not take species listed as endangered in 50 CFR 17 but may transport or possess such species in accordance with 50 CFR 17.
- (5) The permittee may not take during any period of 12 months, as part of his three-bird limitation, more than one raptor listed as threatened in 50 CFR 17 and then only in accordance with 50 CFR 17.

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.29.

.0808 FACILITIES AND EQUIPMENT

(a) Inspection and Certification. Prior to issuance of a falconry permit, the applicant's raptor housing facilities and falconry equipment shall be certified by a representative of the Commission as meeting the standards set forth in Subsections (b) and (c) of this Rule.

(b) Housing Facilities. The primary consideration of raptor housing, whether indoors (mews)

or outdoors (weathering area), being protection of the raptor from the environment, predators, and undue disturbance, the applicant shall have holding facilities meeting the following standards:

- (1) Indoor Facilities (Mews). Mews shall be large enough to allow easy access for earing for the raptors housed therein. Minimum size of the mew shall be 8 x 8 feet with access provided by a full size door at least 2 x 6.5 feet. Chipboard or waferboard must be properly sealed to prevent formaldehyde toxication. Interior walls should not be painted or stained. Mews should be located away from loud noises and shade should be provided. If more than one raptor is to be kept in a mew, they shall be tethered or separated by partitions and the area for each bird shall be large enough to allow the bird to extend its wings fully. There shall be at least one window, protected on the inside by vertical bars and containing a window perch, spaced narrower than the width of the bird's body, and a secure door that must close automatically. can be easily closed. The floor of the mew shall permit easy cleaning and shall be well drained. Adequate perches shall be provided.
- (2) Outdoor Facilities (Weathering Areas). Weathering areas shall be fenced and covered with netting or wire mesh, or roofed to protect the birds from disturbance and attack by predators, except that perches more than six and one-half feet high need not be covered or roofed. Covers or roofs shall not be less than seven feet high and shall have at least 24 inches clearance above highest perch. The enclosed area shall be no less than 8 x 8 feet, but large enough to insure the birds cannot strike the fence when flying from the perch. The floor of the weathering area shall be covered with a thick covering of natural or artificial turf and allows for adequate drainage. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided. The weathering area shall also include a jump box, A-frame, or similar structure which will offer the raptor a secure perch. All edges of this structure shall be padded with artificial turf or similar material. The interior width and the interior height from the bottom to top, shall be no less than 32 inches for a red-tailed hawk, or 1 1/2 times the length of the bird to be accommodated. The interior perch shall be a min-

imum of five inches high. Structure shall be constructed of treated materials or painted with a non-lead base paint. At least two perches shall be provided for each bird, and should be covered with artificial turf, hemp rope, or similar material. Secured leash shall offer access to all perches and bath container yet should not come in contact with the fence and be free from entanglement.

(c) Equipment. The following items shall be in the possession of the applicant before he can obtain a permit:

- (1) At least one pair of Alymeri jesses or similar type constructed of pliable high-quality leather or suitable synthetic material to be used when any raptor is flown free; (Traditional one-piece jesses may be used on raptors when not being flown.)
- (2) At least one flexible, weather-resistant leash and one strong figure eight type swivel of acceptable falconry design;
- (3) At least one suitable bath, two to six inches 2"-6" deep and wider than the length of the raptor, at least 24" wide for drinking and bathing for each raptor;
- (4) A reliable scale or balance with perch attached for weighing raptors held and capable of measuring up to five pounds and graduated to increments of not more than one-half 1/2 ounce or 15 grams;
- (5) Outdoor Perches. At least one portable weathering area perch of an acceptable design shall be provided for each raptor. These include a block, ring or bow perch.

(d) Maintenance. All facilities and equipment shall be kept at or above the standards contained in Subsections (b) and (c) of this Rule at all times.

(e) Transportation and Temporary Holding. A raptor may be transported or held in temporary facilities which shall be provided with an adequate perch and protected from extreme temperatures and excessive disturbance for a period not exceeding 30 days.

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.29.

.0809 MARKING

(a) Markers. Each raptor held within this state, other than those held for scientific, zoological purposes, or rehabilitation purposes as provided for through federal permit, shall be affixed with a numbered, non-reusable marker supplied by the commission. After the effective date of this Section, before any unmarked raptor is acquired in this state, an appropriate marker must be first

acquired and attached to the raptor immediately upon acquisition. A written application is required to obtain any such marker. Upon issuing any such marker, the executive director may impose such conditions on the method of acquisition or taking such unmarked raptor, the species to be taken, and the location in which the same is permitted to be taken as he may deem appropriate for the conservation of wild raptor populations in this state.

All peregrine falcons (*Falco peregrinus*), gyrfalcons (*Falco rusticolus*), and Harris hawks (*Parabuteo unicinctus*) possessed for falconry purposes must be marked in accordance with the following provisions:

- (1) Any peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or Harris hawk (*Parabuteo unicinctus*), except a captive bred raptor lawfully marked by a numbered, seamless band issued by the Service, must be banded with a permanent, non-reusable, numbered band issued by the Service.
- (2) Any peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or Harris hawk (*Parabuteo unicinctus*), possessed for falconry purposes must be banded at all times in accordance with these standards. Loss or removal of any band must be reported to the issuing office within five working days of the loss and must be replaced with a permanent non-reusable, numbered band supplied by the Service.
- (3) After the effective date of this Section, before any unmarked raptor of these species is acquired in this state, an appropriate marker must be first acquired and attached to the raptor immediately upon acquisition. A written application is required to obtain any such marker.
- (4) Permittees must affix a non-reusable marker to any raptor which may require retrapping. Only marked raptors may be retrapped at any time.
- (5) ~~(4)~~ Counterfeiting or Alteration. No person shall counterfeit, alter, or deface any marker required by this Rule, except that permittees may remove the rear tabs on markers and may smooth any surface imperfections provided the integrity of the markers and numbering are not affected.

Authority: G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.29.

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

.0003 ENDANGERED SPECIES LISTED

(a) The following species of resident wildlife are designated as federally-listed-endangered species:

- (1) Amphibians:
None Listed At This Time
- (2) Birds:
 - (A) American peregrine falcon (*Falco peregrinus anatum*);
 - (B) Bachman's warbler (*Vermivora bachmanii*);
 - (C) Bald eagle (*Haliaeetus leucocephalus*);
 - (D) Ivory-billed woodpecker (*Campephilus principalis*);
 - (E) Kirtland's warbler (*Dendroica kirtlandii*);
 - (F) Red-cockaded woodpecker (*Picoides borealis*);
 - (G) Roseate tern (*Sterna d. dougallii*);
 - (H) Wood stork (*Mycteria americana*).
- (3) Fish:

- (A) Cape fear shiner (*Notropis mekistocholas*);
- (B) Shortnose sturgeon (*Acipenser brevirostrum*), when found in inland fishing waters.

(4) Mammals:

- (A) Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*);
- (B) Eastern cougar (*Felis concolor cougar*);
- (C) Gray bat (*Myotis grisescens*);
- (D) Indiana bat (*Myotis sodalis*);
- (E) Manatee (*Trichechus manatus*), when found in inland fishing waters;
- (F) Virginia big-eared bat (*Plecotus t. townsendii*).

(5) Mollusks:

- (A) Dwarf wedge mussel (*Alasmodonta heterodon*);
- (B) Little-wing pearl mussel (*Pegias fabula*);
- (C) Tar river spiny mussel (*Elliptio [canthyrus] steinstansana*).

(6) Reptiles:

- (A) Atlantic ridley turtle (*Lepidochelys kempii*);
- (B) Hawksbill turtle (*Eretmochelys imbricata*);
- (C) Leatherback turtle (*Dermochelys coriacea*).

(b) The following species of resident wildlife are designated as state-listed endangered species:

- (1) Amphibians:
Green salamander (*Aneides aeneus*).
- (2) Birds:
None Listed At This Time
Bewick's wren (*Thryomanes bewickii*);
- (3) Fish:
None Listed At This Time
- (4) Mammals:

None Listed At This Time

(5) Mollusks:

~~None Listed At This Time~~

- (A) Appalachian clktoe (Alasmidonta raveneliana);
- (B) Barrel floate (Anodonta couperiana);
- (C) Carolina heelsplitter (Lasmigona decorata);
- (D) Fragile glyph (Glyphyalinia clingmani);
- (E) Green floate (Lasmigona subviridis);
- (F) Knotty elimia (Goniobasis interrupta);
- (G) Magnificent rams-horn (Planorbella magnifica);
- (H) Neuse spike (Elliptio judithae);
- (I) Pistolgrip (Tritigonia verrucosa);
- (J) Slippershell mussel (Alasmidonta viridis);
- (K) Tennessee heelsplitter (Lasmigona holstonia);
- (L) Tennessee pigtoe (Fusconaia barnesiana).

(6) Reptiles:

None Listed At This Time

Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

.0004 THREATENED SPECIES LISTED

(a) The following species of resident wildlife are designated as federally-listed threatened species:

(1) Amphibians:

None Listed At This Time

(2) Birds:

- (A) Arctic peregrine falcon (Falco peregrinus tundrius);
- (B) Piping plover (Charadrius melodus).

(3) Fish:

- (A) Spotfin chub (Hybopsis monacha);
- (B) Waccamaw silverside (Menidia extensa).

(4) Mammals:

Dismal swamp southern shrew (Sorex longirostris fisheri).

(5) Mollusks:

Noonday ~~land~~ snail globe (Mesodon clarki nantahala).

(6) Reptiles:

- (A) American alligator (Alligator mississippiensis);
- (B) Green turtle (Chelonia mydas);
- (C) Loggerhead turtle (Caretta caretta).

(b) The following species of resident wildlife are designated as state-listed threatened species:

(1) Amphibians:

- (A) Eastern tiger salamander (Ambystoma t. tigrinum);
- (B) Wehrle's salamander (Plethodon wehrlei).

(2) Birds:

~~None Listed At This Time~~

Gull-billed tern (Gelochelidon nilotica aranaea).

(3) Fish:

None Listed At This Time

(4) Mammals:

Eastern wood rat (Neotoma f. floridana).

(5) Mollusks:

~~None Listed At This Time~~

- (A) Atlantic pigtoe (Fusconaia masoni);
- (B) Big-tooth covert (Mesodon jonestianus);
- (C) Brook floate (Alasmidonta varicosa);
- (D) Cape Fear spike (Elliptio marsupiobesa);
- (E) Cape Fear threetooth (Triodopsis soelneri);
- (F) Clingman covert (Mesodon clingmanicus);
- (G) Engraved covert (Mesodon orestes);
- (H) Mountain creckshell (Villosa vanuxemensis);
- (I) Roan supercoil (Paravitrea varidens);
- (J) Roanoke slabshell (Elliptio roanokensis);
- (K) Savannah lilliput (Toxolasma pullus);
- (L) Sculpted supercoil (Paravitrea ternaria);
- (M) Seep mudalia (Leptoxis dilatata);
- (N) Smoky Mountain covert (Mesodon ferrissi);
- (O) Squawfoot (Strophitus undulatus);
- (P) Triangle floate (Alasmidonta undulata);
- (Q) Waccamaw ambersnail (Catinella waccamawensis);
- (R) Waccamaw fatmucket (Lampsilis fullerkati);
- (S) Waccamaw spike (Elliptio waccamawensis);
- (T) Yellow lampmussel (Lampsilis cariosa);
- (U) Yellow lance (Elliptio lanceolata).

(6) Reptiles:

Bog turtle (Clemmys muhlenbergii).

Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

.0005 SPECIAL CONCERN SPECIES LISTED

The following species of resident wildlife are designated as state-listed special concern species:

(1) Amphibians:

- (a) Carolina crawfish frog (Rana areolata capito);
- (b) Crevice salamander (Plethodon longicrus);
- (c) Dwarf salamander [silver morph] (Eurycea quadridigitata);

- (d) Eastern hellbender (*Cryptobranchus a. alleganiensis*);
- (e) Four-toed salamander (*Hemidactylium scutatum*);
- (f) Junaluska salamander (*Eurycea junaluska*);
- (g) Longtail salamander (*Eurycea l. longicauda*);
- (h) Mole salamander (*Ambystoma talpoideum*);
- (i) Mountain chorus frog (*Pseudacris brachyphona*);
- (j) Mudpuppy (*Necturus maculosus*);
- (k) Neuse river waterdog (*Necturus lewisi*);
- (l) River frog (*Rana heckscheri*);
- (m) Weller's salamander (*Plethodon welleri*);
- (n) Zigzag salamander (*Plethodon dorsalis*).
- (2) Birds:
- (a) Bachman's sparrow (*Aimophila aestivalis*);
- ~~(b) Bewick's wren (*Thryomanes bewickii*);~~
- (b) ~~(b)~~ Black-capped chickadee (*Parus atricapillus*);
- ~~(c) (c)~~ Black skimmer (*Rhynchops niger*);
- ~~(d) (d)~~ Brown pelican (*Pelecanus occidentalis*);
- ~~(e) (e)~~ Black vulture (*Coragyps atratus*);
- ~~(f) (f)~~ Cooper's hawk (*Accipiter cooperi*);
- ~~(g) (g)~~ Glossy ibis (*Plegadis falcinellus*);
- ~~(h) (h)~~ Golden-crowned kinglet (*Regulus satrapa*);
- ~~(i) (i)~~ Gull-billed tern (*Gelochelidon nilotica aranea*);
- ~~(j) (j)~~ Little blue heron (*Egretta caerulea*);
- ~~(k) (k)~~ Loggerhead shrike (*Lanius ludovicianus*);
- ~~(l) (l)~~ Northern saw-whet owl (*Aegolius acadicus*);
- ~~(m) (m)~~ Olive-sided flycatcher (*Contopus borealis*);
- ~~(n) (n)~~ Snowy Egret (*Egretta thula*);
- ~~(o) (o)~~ Tricolor heron (*Egretta tricolor*).
- (3) Fish:
- None Listed At This Time
- (4) Mammals:
- (a) Brazilian free-tailed bat (*Tadarida brasiliensis cynocephala*);
- (b) Eastern wood rat (*Neotoma floridana haemitoria* and *N.f. magister*);
- (c) Keen's bat (*Myotis keenii septentrionalis*);
- (d) Long-tailed shrew (*Sorex dispar blitchi*);
- (e) Pygmy shrew (*Sorex hoyi winnemana*);
- (f) Rafinesque's big-eared bat (*Plecotus r. rafinesquii* and *P.r. macrotis*);
- (g) Rock vole (*Microtus chrotorrhinus carolinensis*);
- (h) Small-footed bat (*Myotis l. liebi*);
- (i) Southeastern bat (*Myotis austroriparius*);
- (j) Star-nosed mole (*Condylura cristata parva*);
- (k) Water shrew (*Sorex palustris punctulatus*).
- (5) Mollusks:
- None Listed At This Time
- (a) Alabama rainbow (*Villosa nebulosa*);
- (b) Alewife floater (*Anodonta implicata*);
- (c) Appalachian gloss (*Zonitoides patuloides*);
- (d) Bidentate dome (*Ventridens coelaxis*);
- (e) Black mantleslug (*Pallifera hemphilli*);
- (f) Blackwater ancyliid (*Ferrissia hendersoni*);
- (g) Blue-foot lancetooth (*Haplotrema kendeighi*);
- (h) Carolina creekshell (*Villosa vaughaniana*);
- (i) Carolina elktoe (*Alasmodonta robusta*);
- (j) Dark glyph (*Glyphyalinia junaluska*);
- (k) Dwarf proud globe (*Mesodon clarki*);
- (l) Dwarf threetooth (*Tridopsis fulceni*);
- (m) Eastern lampmussel (*Lampsilis radiata*);
- (n) Eastern pondmussel (*Ligumia nasuta*);
- (o) Fringed coil (*Helicodiscus fimbriatus*);
- (p) Glossy supercoil (*Paravitrea placentula*);
- (q) Great Smoky slitmouth (*Stenotrema depilatum*);
- (r) Greenfield rams-horn (*Helisoma eucosmium*);
- (s) High mountain supercoil (*Paravitrea andrewsae*);
- (t) Honey glyph (*Glyphyalinia vanattai*);
- (u) Lamellate supercoil (*Paravitrea lamellidens*);
- (v) Mirex Ridge supercoil (*Paravitrea clappi*);
- (w) Open supercoil (*Paravitrea umbilicaris*);
- (x) Pink glyph (*Glyphyalinia pentadelphia*);
- (y) Pod lance (*Elliptio folliculata*);
- (z) Queen crater (*Mesodon chisholmensis*);
- (aa) Ramp Cove supercoil (*Paravitrea lactodens*);
- (bb) Saw-tooth disc (*Discus bryanti*);
- (cc) Spike (*Elliptio dilatata*);
- (dd) Spiral coil (*Helicodiscus bonamicus*);
- (ee) Tidewater mucket (*Lampsilis ochracea*);
- (ff) Velvet covert (*Mesodon subpalliatum*);
- (gg) Waccamaw amnicola (*Amnicola sp.*);
- (hh) Waccamaw lampmussel (*Lampsilis crocata*);
- (ii) Waccamaw siltsnail (*Cincinnati sp.*);
- (jj) Wavy-raised lampmussel (*Lampsilis fasciola*).
- (6) Reptiles:
- (a) Carolina salt marsh snake (*Nerodia sipedon williamengelsi*);
- (b) Diamondback terrapin (*Malaclemys terrapin*);

- (c) Eastern smooth green snake (*Opheodrys v. vernalis*);
- (d) Eastern spiny softshell (*Apalone s. spinifera*);
- (e) Mimic glass lizard (*Ophisaurus mimicus*);
- (f) Northern pine snake (*Pituophis m. melanoleucus*);
- (g) Outer banks kingsnake (*Lampropeltis getulus sticticeps*);
- (h) Stripeneck musk turtle (*Sternotherus minor peltifer*).

Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to amend rule(s) cited as 16 NCAC 6C .0310; 611 .0010.

The proposed effective date of this action is April 1, 1991.

The public hearing will be conducted for 16 NCAC 6H .0010 at 10:00 a.m. and 16 NCAC 6C .0310 at 11:00 a.m. on December 14, 1990 at the 3rd Floor Conference Room, Education Building, 116 W. Edenton St., Raleigh, NC 27603-1712.

Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0300 - CERTIFICATION

.0310 STANDARD EXAMINATIONS

(a) The NTE are the standard examinations required for initial certification.

- (1) For formal admission into an approved teacher education program, a person must score at least 643 on the Communication Skills Test and 641 on the General Knowledge Test. These requirements apply to person who have not passed these tests by January 1, 1990. The score on the Communication Skills Test will be increased to 646 and the score on the General Knowledge Test will be increased to 645 as of July 1, 1992. These require-

ments do not apply to persons whose specialty area is school social work, school counseling or school psychology.

- (2) All applicants for initial certification must score at least 646 on the Professional Knowledge Test.

- (3) In addition to the Professional Knowledge Test, each applicant for initial certification must meet minimum teaching area scores as follows:

(A) Agriculture	
(B) Art Education	500
(C) Audiology	570
(D) Biology	510
(E) Biology and General Science	550
(F) Business Education	530
(G) Chemistry	460
(H) Chemistry, Physics and General Science	510
(I) Early Childhood Education	500
(J) Earth/Space Science	470
(K) Earth Space Science (Middle Grades Science)	470
(L) Education in the Elementary School	520
(M) Education of the Mentally Retarded	510
(N) Educational Leadership: Administration and Supervision	520
(O) English Language and Literature	490
(P) English Language and Literature (Middle Grades Language Arts)	400
(Q) French	500
(R) German	470
(S) Health Education	550
(T) Home Economics Education	510
(U) Industrial Arts Education	530
(V) Introduction to the Teaching of Reading	470
(W) Library Media Specialist	550
(X) Marketing Education	620
(Y) Mathematics	510
(Z) Mathematics (Middle Grades Mathematics)	490
(AA) Music Education	500
(BB) Physical Education	550
(CC) Physics	470
(DD) Reading Specialist	510
(EE) School Guidance and Counseling	500
(FF) School Psychologist	590
(GG) Social Studies	510
(HH) Social Studies (Middle Grades Social Studies)	480
(II) Spanish	500
(JJ) Special Education (Cross	

- Categorical) 440
- (KK) Speech Communication 510
- (LL) Speech-Language Pathology 550
- (MM) Teaching Emotionally Disturbed Students 590
- (NN) Teaching English as a Second Language 520
- (OO) Teaching Hearing Impaired Students 590
- (PP) Teaching Learning Disabled Students 500
- (QQ) Teaching Visually Handicapped Students 550
- (4) If no teaching area score is possible under Paragraph (a)(3) of this Rule, the Professional Knowledge score satisfies the NTE requirement.
- (5) Based on the special nature of the preparation for certification, School Social Workers are excluded from NTE regulations and School Psychologists are required to take only the Area examination for School Psychologists.
- (b) Instead of the NTE scores an applicant, except a North Carolina approved program graduate at the Class A level, may be certified on the basis of the Graduate Record Examinations with minimum scores of 380 on the Verbal Ability, 410 on the Quantitative Ability, and 380 on the Analytical Ability examinations.

Authority: G.S. 115C-12(9)a; N.C. Constitution, Article IX, Sec. 5.

SUBCHAPTER 6H - FEDERAL PROGRAMS

.0010 SPECIAL EDUCATION DUE PROCESS PROCEDURES

- (a) The due process procedures set forth in 34 CFR 300.500 through 300.513 are adopted herein by reference thereto.
- (b) Only impartial hearing review officers who have been trained and approved by the SBE may conduct review hearings. ~~The H-A which holds the hearing must contract with the appointed hearing officer and assume fiscal responsibility for the hearing.~~
- (c) Hearing Review officers are appointed for a two-year term. An applicant must meet the following criteria to be appointed:
 - (1) hold at least a baccalaureate degree;
 - (2) have special training in law, psychology, special education or school administration; and
 - (3) be available to serve throughout one or more education districts.

(d) Hearing Review officers have the powers listed in G.S. 150B-33 and the following powers/duties:

- (1) to establish reasonable time limitations on the parties' presentations; examine the entire hearing record;
- (2) to disallow irrelevant, immaterial or repetitive evidence; ensure that the procedures at the hearing conducted by the administrative law judge were consistent with the requirements of due process;
- (3) to direct that additional evaluations of the child be performed; seek additional evidence, if necessary. If a hearing is held to receive additional evidence, the parties have the same rights as applied to the original hearing;
- (4) to make findings of fact and conclusions of law relevant to the issues involved in the hearing; afford the parties an opportunity for oral or written argument, or both, at the discretion of the review officer;
- (5) to issue subpoenas for the attendance of witnesses or the production of documents; make an independent decision on completion of the review; and
- (6) to specify the type and scope of the program and related services to be offered the child, where the proposed program or placement is found not to be appropriate, and the least restrictive environment appropriate to the child's needs; and give a copy of written findings and the decision to the parties.
- (7) to advise the parties of their right under G.S. 150B-47 to seek a declaratory ruling from the state board, where an issue concerns the validity of a rule or the applicability of a statute administered by the board to a given state of facts.
- (e) Appeal from a local hearing decision or judicial review of a state review decision is governed by G.S. 115C-116.

Statutory Authority: G.S. 115C-141.

TITLE 18 - SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Secretary of State, Securities Division intends to adopt rules cited as 18 NCAC 6 .1901 - .1906.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 10:00 a.m. on December 14, 1990 at the Securities Division, Legislative Office Building, 300 North Salisbury Street, Suite 404, Raleigh, NC 27603.

Comment Procedures: Any person may present oral comments at the hearing. Requests to speak should be presented in writing to the Deputy Securities Administrator at the address shown below no later than five days before the date of the hearing. Additional comments may be allowed by the Division at the public hearing as time allows. All presentations will be limited to 30 minutes. No fiscal note has been prepared pursuant to N.C.G.S. 150B-11(3) in connection with this proposed addition to the administrative rules of the Division, as the proposed addition will not require the expenditure or distribution of state funds.

Any interested person may also present written comments on these rules for consideration by the Securities Division. The hearing record will remain open for receipt of comments from November 15, 1990, through December 14, 1990. Written comments should be received by the Division by midnight on December 13, 1990 to be considered as part of the hearing record. Comments should be addressed to:

*Stephen M. Wallis
Deputy Securities Administrator
Securities Division
Department of Secretary of State
Room 404
300 North Salisbury Street
Raleigh, NC 27603-5909*

CHAPTER 6 - SECURITIES DIVISION

SECTION .1900 - REGISTRATION OF ATHLETE AGENTS

.1901 APPLICATION FOR REGISTRATION OF ATHLETE AGENTS

(a) Each applicant for registration as an athlete agent shall complete the "North Carolina Athlete Agent Registration Application" (Form NCAA1). Appended to such form shall be one of the following disclosure documents:

- (1) The National Basketball Players Association's "Application for Certification as an NBPA Player Agent";
- (2) The National Football League Players Association's "Application for NFLPA Member Contract Adviser";

- (3) The Major League Baseball Players Association's "MLBPA Player Agent Certification Statement";
- (4) The North Carolina Disclosure Form (Form NCAA3); or
- (5) Any other disclosure document which has been pre-approved by the Secretary of State.

(b) A check in the amount of two hundred dollars (\$200.00), payable to "Secretary of State", shall be transmitted with the application for registration, along with a completed Form NCAA4 ("Athlete Agent Consent to Service of Process"). Registration becomes effective on the date of issuance of a certificate of registration to the applicant.

Statutory Authority G.S. 78C-46(b); 78C-72; 78C-81.

.1902 EXPIRATION OF REGISTRATION

Registration as an athlete agent is for a period of one year and shall automatically expire one year from the date of issuance of the original certificate of registration, unless renewed by the applicant.

Statutory Authority G.S. 78C-72; 78C-81.

.1903 RENEWAL OF REGISTRATION

(a) A completed application for renewal of registration as an athlete agent must be received by the Office of the Secretary of State at least 30 days but not more than 60 days prior to the expiration of a currently effective registration.

(b) Each applicant for renewal of registration as an athlete agent shall complete and submit a Form NCAA1 ("North Carolina Athlete Agent Registration Application") along with a filing fee of two hundred dollars (\$200.00) in the form of a check made payable to "Secretary of State". It is not necessary to file Form NCAA4 ("Athlete Agent Consent to Service of Process") with an application for renewal of registration as an athlete agent.

Statutory Authority G.S. 78C-46; 78C-72; 78C-81.

.1904 APPROVAL OF AGENT CONTRACTS

(a) All contract forms proposed to be used by an athlete agent must be pre-approved in writing by the Secretary of State prior to their use in North Carolina.

(b) Any amendments to approved contracts must also be filed and approved in writing by the Secretary of State prior to their use.

Statutory Authority G.S. 78C-75; 78C-81.

.1905 NOTICE TO CLIENT

The "Notice to Client" required by G.S. 78C-75(b) shall appear on the front page of each contract given directly or indirectly to an athlete by an athlete agent relating to services as an athlete agent.

Statutory Authority G.S. 78C-75; 78C-81.

.1906 FORMS

The following forms are available upon request from the Office of the Secretary of State:

- (1) North Carolina Athlete Agent Registration Application (Form NCAA1);
- (2) Athlete Agent Surety Bond (Form NCAA2);
- (3) North Carolina Disclosure Form (NCAA3); and
- (4) Athlete Agent Consent to Service of Process (Form NCAA4).

Statutory Authority G.S. 78C-46; 78C-72; 78C-81.

**TITLE 21 - OCCUPATIONAL LICENSING
BOARDS**

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Pharmacy intends to adopt rule cited as 21 NCAC 46 .2108.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 9:00 a.m. on December 17, 1990 at 602-11 Jones Ferry Road, Carrboro, North Carolina.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with the Board at least ten days prior to the public hearing at which the person wishes to speak. Comments should be limited to ten minutes. The Board's address is: P.O. Box 459, Carrboro, North Carolina 27510. Any person may file a written submission of comments or argument at any time up to and including December 17, 1990.

CHAPTER 46 - BOARD OF PHARMACY

SECTION .2100 - ELECTIONS

.2108 DETERMINATION OF ELECTION

RESULTS

The determination of election results shall be in accordance with G.S. 163-111, which is adopted herein by reference. This adoption is in accordance with the provisions of G.S. 150B-14(c).

Statutory Authority G.S. 90-85.7; 150B-14.

**TITLE 23 - DEPARTMENT OF
COMMUNITY COLLEGES**

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Community Colleges Department of Community Colleges intends to amend rule cited as 23 NCAC 2D .0109.

The proposed effective date of this action is April 1, 1991.

The public hearing will be conducted at 10:00 a.m. on December 18, 1990 at the Caswell Building, 201-A Conference Room, Second Floor, 200 West Jones Street, Raleigh, North Carolina 27603-1337.

Comment Procedures: A ten-minute time limit per person may be imposed for oral presentations. The number of persons making oral presentations may be limited in order to stay within the time available. Individuals who plan to make oral presentations must submit their remarks in writing to the hearing officer. This procedure will assist the hearing officer in organizing and reporting information to the SBCC. Written statements not to be presented at the hearing should be directed to Mr. Larry Morgan, Hearing Officer, Department of Community Colleges, 200 West Jones Street, Raleigh, N.C. 27603-1337 by December 17, 1990.

CHAPTER 2 - COMMUNITY COLLEGES

**SUBCHAPTER 2D - COMMUNITY COLLEGES:
FISCAL AFFAIRS**

SECTION .0100 - SALARIES

**.0109 LONGEVITY PAY PLAN FOR
INSTITUTION PERSONNEL**

(a) Permanent, full-time Employees of institutions in the community college system assigned to permanent full-time or permanent part-time positions shall receive longevity pay if the employees meet the requirements of aggregate total qualifying service set forth in this Rule.

(b) Aggregate Total service ~~to the State of North Carolina~~ for the longevity pay plan is based on a month-for-month computation of

permanent full-time and permanent part-time ~~(equated to full-time)~~ (20 hours or more, but less than full-time) employment with:

- (1) an institution in the ~~North Carolina~~ community college system or a school administrative unit regardless of the source of salary and including state, local or other paid employment.
- (A) Employment for a ~~full~~ school year is equivalent to one full calendar year (credit for a partial year is given on a month-for-month basis).
- (B) In no event will an employee earn more than a year of ~~aggregate total~~ service credit in a 12-month period.
- (C) If an employee ~~works half the work days in a month, is in pay status (working, exhausting vacation or sick leave, or when on workers' compensation leave or is on authorized military leave) for one-half or more of the regularly scheduled workdays in a month, credit will~~ shall be given for ~~a full the entire month.~~
- (2) a school administrative unit in North Carolina, including state, local, ~~or other paid employment.~~
- (A) Employment for a full school year is equivalent to one full calendar year (credit for a partial year is given on a month-for-month basis).
- (B) In no event will an employee earn more than a year of ~~aggregate~~ service credit in a 12-month period.
- (C) If an employee ~~works half the work days in a month, credit will be given for a full month.~~
- (3) departments, agencies, and institutions of the State of North Carolina, (e.g., State Department of Administration, State Revenue Department, University of North Carolina, State Department of Community Colleges, State Department of Public Instruction).
- (4) other governmental units which are now agencies of the State of North Carolina (e.g., county highway maintenance forces, War Manpower Commission, judicial system).
- (5) county agricultural extension service.
- (5) local mental health, public health, social services or civil preparedness agencies in North Carolina, if such employment is subject to the State Personnel Act.
- (6) authorized military leave.
- (A) Credit for military leave is granted only for persons who were employees of the State of North Carolina or other agencies

listed in Paragraph (b) of this Rule who were granted leave without pay:

- (i) for a period of involuntary service plus 90 days ~~or for a period of voluntary enlistment for up to four years, plus 90 days, so long as they returned to employment in a covered agency within the 90 days ; or~~
- (ii) for a period of active duty for service, alerts, or required annual training while in the National Guard or in a military reserve program.
- (B) Employees who enlist for more than four years or who re-enlist shall not be eligible for military leave.
- (C) Employees hospitalized for a service-connected disability or injury shall be granted additional leave without pay for the period of hospitalization plus 90 days or for 12 months, whichever is shorter. The hospitalization must commence before reinstatement into qualifying service for the provisions of this part to apply.
- (c) ~~Aggregate Total service to the State of North Carolina~~ for the longevity pay plan does not include:
 - (1) Temporary service, that is, service by an employee who works in a temporary position, or who is working temporarily in the absence of a permanent employee on leave of absence, except that temporary service of employees of the General Assembly will be counted and the full legislative terms of the members. Service of legislative interns and pages will not be counted.
 - (2) Periods of out-of-state employment with other states, schools, colleges or universities.
 - (3) Periods of employment with agencies of the federal government.
 - (4) Periods of military service other than those categories described in Subparagraph (b) ~~(7)~~ (6) of this Rule.
 - (5) Periods of employment for ~~employees~~ employers other than the State of North Carolina even though credit in the North Carolina retirement system has been purchased for such employment.
 - (d) ~~A permanent full-time~~ An employee assigned to a permanent full-time or permanent part-time position is eligible for longevity pay only after the date the employee has completed ten years of ~~aggregate total~~ service ~~to the State of North Carolina.~~ with a community college, a school administrative unit or a state agency.
 - (e) Annual longevity pay amounts are based on the length of ~~aggregate total~~ service ~~to the~~

~~State of North Carolina, state agencies, community colleges, and technical institutes and public schools~~ school administrative units as designated in Paragraph (b) of this Rule and a percentage of the employee's annual rate of pay on the date of eligibility.

- (1) Longevity pay amounts are computed by multiplying the employee's annual base or contract salary rate as of the eligibility date by the appropriate percentage, rounded to the nearest dollar, in accordance with the following table:

Aggregate Years of Total State Service	Longevity Pay Rate
10 but less than 15 years	1.50%
15 but less than 20 years	2.25%
20 but less than 25 years	3.25%
25 or more years	4.50%

- (2) Longevity pay is not considered a part of annual base or contract pay nor is it to be represented in personnel and payroll records as a part of annual base salary. (Salary increases effective on the same date as the longevity eligibility date shall be incorporated in the base pay before computing longevity).

(f) The payment of longevity pay to eligible employees is automatic. Payment shall be made in a lump sum, subject to all statutory deductions, during the monthly pay period in which the employee has satisfied all eligibility requirements.

- (1) Eligible employees on worker's compensation leave shall receive longevity payment in the same manner as if they were working.
- (2) If an employee retires, resigns, dies, or is otherwise separated on or after the date of becoming eligible for a longevity payment, the full payment shall be made to the employee or to the estate of the employee in case of death.
- (3) If, on the effective date of this policy, an employee has completed the qualifying length of service but is between eligibility dates, longevity payment will be made on the next longevity anniversary date.
- (4) If the employee has worked part but not all of one year since qualifying for longevity payment, the employee shall receive a pro-rata payment in the event of:
 - (A) separation from the institution;

(B) change in employment status to temporary part-time, or to a position not covered in this policy.

- (5) If an employee separates from ~~an institution~~ a community college and receives a partial longevity payment and is employed by another ~~institution~~ community college, school administrative unit, or state agency, the balance of the longevity payment shall be made upon completion of additional service totaling 12 months for an employee having a 12-month period of employment, or upon completion of a lesser term for ~~a teacher~~ an eligible employee on less than a 12-month ~~contract~~ period of employment. The balance due is computed on the annual salary or contract being paid at the completion of the requirement.
- (6) If an eligible employee at the time of separation has a fraction of a year toward the next higher percentage rate, payment shall be based on the higher rate; however, the basic eligibility for longevity requirement must have been satisfied before this provision can apply.
- (7) Leave without pay in excess of one-half the work days in a month (with the exception of authorized military leave and worker's compensation leave) will delay the longevity anniversary date on a month-for-month basis.
- (g) Longevity pay shall be made from the same source of funds and in the same pro-rata amounts from which the employee's regular annual salary is paid (e.g. state, federal, local funds).
 - (1) Local trustees may provide longevity payments to employees from other than state allotted funds.
 - (2) Only personnel employed in positions allotted by the formula in Rule 2D .0301(d) of this Subchapter shall receive longevity pay from the longevity reserve. An additional allocation will be made for this purpose.
 - (3) Employees in state-allotted positions paid with state-allotted funds other than regular formula allotments shall receive longevity pay from the same source of funds as their salary payment.
 - (4) Employees paid with the following specified funds shall receive longevity pay from these respective sources:
 - (A) Adult basic education funds,
 - (B) Human resource development funds,
 - (C) New industry funds,
 - (D) ~~CETA~~ JTPA funds,
 - (E) Special allotment funds, ~~and~~

(F) Federal vocational educational funds,
and

(G) Local funds.

(h) The president of each ~~institution~~ commu-
nity college shall:

- (1) Determine the ~~quality~~ quantity of qualify-
ing service and the longevity anniversary
date for each eligible employee.
- (2) Furnish to the state board, on forms pre-
scribed by the Department, data necessary
for a determination of the cost of the lon-
gevity pay plan from state funds.

(i) The ~~State~~ President of the Community
College System shall determine the total cost of
the longevity pay plan from data submitted by
each ~~institution.~~ community college. If funds
are not adequate to pay longevity rates estab-
lished under this Rule, the ~~State~~ President of the
Community College System shall submit a
budget revision to the State Budget Officer re-
questing additional funds from other available
sources within State Aid.

*Statutory Authority G.S. 115D-5; S.L. 1979, c.
1137, s. 21.*

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Rules filed with changes are noted with ** Amended, ** Adopted. Please contact this office if you have any questions.*

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as * Correction. These changes do not change the effective date of the rule.*

TITLE 5 DEPARTMENT OF CORRECTION

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2B - INMATE CONDUCT RULES: DISCIPLINE

SECTION .0200 - DISCIPLINARY PROCEDURES

.0205 AUTHORIZED DISCIPLINARY PROCEDURES

- (a) For minor offenses arising out of a single incident, one or more of the following are authorized:
 - (1) reprimand;
 - (2) suspension of one or more privileges for a period not to exceed 30 days. No privileges may be suspended which the facility superintendent cannot on his or her own authority grant, such as work release. Privileges which may be suspended include, but are not limited to, access to the movies, telephone, yard privileges, and recreational activities. Visitation privileges may be suspended when a disciplinary offense occurred during visitation;
 - (3) extra duties: The total hours of extra duty shall not exceed 40 and no more than four hours shall be performed on any working day and no more than eight hours on other days. The total period over which the extra duty extends should not exceed 30 days.
- (b) For major offenses arising out of a single incident one or more of the measures authorized for minor offenses may also be imposed and in addition or in lieu thereof one or more of the following:
 - (1) confinement in disciplinary segregation for a period of 1 to 30 days. If the disciplinary committee imposes a maximum and minimum term of confinement, the Superintendent Institution Head will have the discretion to release the inmate at any time within and including the minimum and maximum term. The inmate will receive day-for-day credit for time spent on administrative segregation pending a disciplinary hearing towards his total period of confinement in disciplinary segregation;
 - (2) loss of up to 30 days time earned by previous good conduct;
 - (3) loss of any or all minimum custody privileges (work release, study release, home leave, community volunteer leave, and all authorized outside activities) or loss of minimum custody status; Only the area disciplinary committee may make punitive level adjustments. The appropriate review date of level adjustment may be determined by the area classification committee according to the inmate's behavior following the infraction. If the inmate is to be demoted out of minimum custody, he will be referred to an area classification committee for reassignment in accordance with departmental procedures.

FINAL RULES

(c) For each unrelated offense charged on the same hearing day, additional punishment may be imposed in accordance with these Rules.

(d) Inmates who commit infractions on segregation may be confined in disciplinary segregation for additional periods of 1 to 30 days.

History Note: Statutory Authority G.S. 148-11;

Eff. February 1, 1976;

Amended Eff. December 1, 1990; July 1, 1984; June 1, 1984; February 5, 1979.

SUBCHAPTER 2E - TREATMENT

SECTION .0700 - WORK RELEASE

.0707 OTHER REQUIREMENTS/CONDITIONS

(a) If an inmate is to be transferred for the purpose of work release a DC-121R outlining classification actions and objectives should accompany the inmate's record to the receiving unit.

(b) The inmate should be in the appropriate minimum custody level for work release at the time of transfer. This will prevent unnecessary delays.

(c) The issue of restitution must have been considered and resolved by the reviewing authority with the completion of the appropriate forms if the inmate has been court recommended or court ordered for restitution.

(d) Appropriate disciplinary action for major infractions committed while on the work release program shall be at the discretion of the Area Disciplinary Committee.

(e) Mutual agreement programming (individual contracts) should be considered, especially with felons, by the classification/program committee whenever possible. These arrangements should include programs such as G.E.D./A.B.E., alcohol, drug treatment.

(f) For inmates who are approved by the Parole Commission for work release, the Commission will require:

- (1) The submission of an acceptable job plan on a DC-190 by the Division of Prisons for initial job approval.
- (2) The submission of any subsequent job changes to the Parole Commission are to be made by telephone. The Parole Commission may render their decision by telephone, with written follow-up on form PC-28.
- (3) Parole Commission approval for work release shall automatically be withdrawn anytime an inmate is removed from work release because of an infraction resulting in demotion to medium custody.

History Note: Statutory Authority G.S. 148-11;

Eff. February 1, 1976;

Amended Eff. December 1, 1990; December 1, 1986; July 1, 1985.

TITLE 17 DEPARTMENT OF REVENUE

CHAPTER 6 INDIVIDUAL INCOME TAX DIVISION

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .3500 - PARTNERSHIPS

.3513 NONRESIDENT PARTNERS

(a) When an established business in North Carolina is owned by a partnership having one or more nonresident members, the managing partner is responsible for reporting the distribution share of the income of each nonresident partner and is required to compute and pay the tax due for each nonresident partner. The tax rate is six percent of the nonresident partner's share of income up to twelve thousand seven hundred fifty dollars (\$12,750), plus seven percent of the income over twelve thousand

seven hundred fifty dollars (\$12,750). The manager is authorized by statute to withhold the tax due from each nonresident partner's share of the partnership net income. Payment of the tax on behalf of nonresident corporate partners does not relieve the corporation from filing corporate income tax and franchise tax returns; however, credit for the tax paid by the managing partner may be claimed on the corporate returns. Although a partnership may treat guaranteed payments to a partner for services or for use of capital as if they were paid to a person who is not a partner, such treatment is only for purposes of determining its gross income and deductible business expenses. For other tax purposes, such guaranteed payments are treated as a partner's distributive share of ordinary income. In determining the allowable North Carolina deductions from Federal taxable income, do not include a partner's salary, interest on a partner's capital account, partner relocation and mortgage interest differential payments, or payments to a retired partner regardless of whether they were determined without regard to current profits. These types of payments are treated as part of the partner's share of the partnership income. A nonresident partner is not required to file a North Carolina individual income tax return when the only income from North Carolina sources is the nonresident's share of income from a partnership doing business in North Carolina and the manager of the partnership has reported the income of the nonresident partners and paid the tax due. A nonresident partner may file an individual income tax return and claim credit for the tax paid by the manager of the partnership if the payment is properly identified on the individual income tax return.

(b) If a partnership has one or more nonresident partners and is operating in one or more states other than North Carolina, the partnership's net income attributable to North Carolina for the purpose of determining the North Carolina income tax liability of a nonresident partner must be determined by multiplying the total net income of the partnership by the apportionment percentage computed in Schedule B, Form D-403. This means that in the allocation of net income of a nonresident partner to North Carolina the applicable allocation formula prescribed for corporations is used. This allocation of income does not affect the reporting of partnership income by the resident partner because he is taxable on his share of the net income of the partnership whether or not any portion of it is attributable to another state or country.

*History Note: Statutory Authority G.S. 105-134.5(d); 105-142(c); 105-154; 105-262;
Eff. February 1, 1976;
Amended Eff. December 1, 1990; June 1, 1990; April 12, 1981.*

SECTION 4100 - TAXABLE STATUS OF DISTRIBUTIONS FROM REGULATED INVESTMENT COMPANIES

.4103 ORDINARY DIVIDENDS

(a) Interest received in the form of dividends from regulated investment companies (mutual funds, investment funds, etc.) is deductible from an individual's federal taxable income to the extent the distributions represent interest on direct obligations of the United States Government. The fund must furnish the taxpayer a statement verifying the amount of interest paid to him which accrued from direct obligations of the United States Government. Interest earned on obligations that are merely backed or guaranteed by the United States Government will not qualify for the deduction. Further, this deduction does not apply to distributions which represent gain from the sale or other disposition of the securities nor to interest paid in connection with repurchase agreements issued by banks and savings and loan associations.

(b) The taxpayer may not deduct mutual fund dividends on the basis of a percentage of investments held by the fund (i.e., a fund has 75 percent of its investments in United States Treasury Notes). The statement to support the deduction must specify the amount received by the taxpayer which represents interests on direct obligations of the United States Government.

(c) The procedure in this Rule will also apply with respect to interest on obligations of the State of North Carolina and any of its political subdivisions to the extent included in federal taxable income.

(d) This Rule applies to taxable years beginning on or after January 1, 1989.

*History Note: Statutory Authority G.S. 105-130.7; 105-151.19; 105-262;
Eff. June 1, 1990;
Amended Eff. December 1, 1990.*

.4105 DIVIDEND TAX CREDIT

(a) Because the interest on federal obligations is treated as flowing through to a shareholder of a mutual fund, the distribution of the interest to shareholders would not be a dividend for purposes of the six percent dividend tax credit.

(b) This Rule applies to taxable years beginning on or after January 1, 1989.

History Note: Statutory Authority G.S. 105-151.19; 105-262;

Eff. June 1, 1990;

Amended Eff. December 1, 1990.

SUBCHAPTER 6C - WITHHOLDING

SECTION .0100 - GENERAL PROVISIONS

.0110 COMMON CARRIERS

(a) The Amtrak Reauthorization and Improvement Act of 1990 provides that no part of the compensation paid to an employee of an interstate railroad subject to the jurisdiction of the Interstate Commerce Commission (ICC) may be subject to income tax, or income tax withholding, in any state except the state of the employee's residence when such employee performs regular assigned duties in more than one state. The Act also precludes the taxation of compensation paid by an interstate motor carrier subject to the jurisdiction of the ICC or to an employee of a private motor carrier performing services in two or more states except by the state of the employee's residence. Therefore, the compensation received by such nonresident employees on and after July 6, 1990, for services performed by this state will not be subject to North Carolina income tax or income tax withholding.

(b) Under the Federal Aviation Act (49 USCS-1512), a nonresident airline employee rendering services on an aircraft would not be liable for North Carolina income tax unless his scheduled flight time in North Carolina is more than 50 percent of his total scheduled flight time during the calendar year. If the employee's flight logs show that more than 50 percent of the scheduled flight time is in North Carolina, the amount of income reportable to this state would be based on the percentage that his North Carolina flight time is to his total flight time for the year.

History Note: Authority G.S. 105-163.2; 105-163.18; 105-262; 49 U.S.C. Sec. 26;

49 U.S.C. Sec. 301A; 49 U.S.C. Sec. 923; 49 U.S.C. Sec. 1512;

Eff. February 1, 1976;

Amended Eff. December 1, 1990; November 1, 1988.

TITLE 19A

DEPARTMENT OF STATE TRANSPORTATION

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0600 - TECHNICAL SERVICES

.0637 SPECIAL PERMIT LIMITATIONS

Off-highway construction equipment will be issued special permits in accordance with size and weight limitations outlined in Rules .0607 through .0611 of this Subchapter with exception of the following:

- (1) self-propelled scrapers with large low pressure tires, maximum of 37,000 lbs. per axle, maximum gross of 55,000 lbs. for 2 axles, 70,000 lbs. for 3 axles and 90,000 lbs. for 4 axles (Dolly and extra axles are used with 2 axle vehicle to increase number);
- (2) self-propelled truck cranes with counterweights and boom removed (it practical):
 - 3 axles -- not to exceed:
25,000 lbs. per axle or gross weight of 70,000 lbs.
 - 4 axles -- not to exceed:
25,000 lbs. per axle or gross weight of 78,000 lbs.
 - 5 axles -- wheel base less than 244 inches -- not to exceed:
rear 3 axles 56,500 lbs.

- | | | |
|------------|---|--------------|
| | front 2 axles | 35,000 lbs. |
| | gross | 91,500 lbs. |
| 5 axles -- | wheel base more than 244 inches -- not to exceed: | |
| | rear 3 axles | 57,000 lbs. |
| | front 2 axles | 37,500 lbs. |
| | gross | 94,500 lbs. |
| 6 axles -- | wheel base more than 296 inches -- not to exceed: | |
| | 2 axle tandem | 50,000 lbs. |
| | 3 axle group | 57,000 lbs. |
| | gross | 103,000 lbs. |
| 7 axles -- | extreme wheel base of 44 feet or more -- not to exceed: | |
| | 2 axle tandem | 40,000 lbs. |
| | 3 axle group | 57,000 lbs. |
| | 4 axle group | 71,000 lbs. |
| | gross | 122,000 lbs. |
- (3) Mobile cranes of three or four axles may be issued annual permits for travel on primary and unposted secondary roads. The permit does not imply permission to use any posted bridge or secondary road posted for 13,000 lb. maximum axle weight. Width limits in Subchapter 2D .0607 apply to these permits.

*History Note: Statutory Authority G.S. 20-119; 136-18(5);
 Eff. July 1, 1978;
 Amended Eff. December 1, 1990; November 1, 1978.*

SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

.0201 DEFINITIONS FOR OUTDOOR ADVERTISING CONTROL

(a) Commercial or Industrial Activities for Unzoned Areas. Those activities generally recognized as commercial or industrial by zoning authorities in the state, and, in addition, any commercial or industrial activity shall meet all of the following criteria to qualify an area unzoned commercial or industrial for the purpose of outdoor advertising control:

- (1) The activity shall have all privilege license(s) required by local, state, or federal authorities as required by law for that type activity;
- (2) The property used for the activity shall be listed for ad valorem taxes with the county and/or municipal taxing authorities as required by law;
- (3) The activity shall be served by available utilities (power, telephone, water, and sewer);
- (4) The activity shall have vehicular access (direct/indirect) and the activity shall be a generator of vehicular traffic;
- (5) The activity shall have a permanent building, designed, built, and/or modified for its current commercial or industrial use;
- (6) There shall be commercial or industrial activity at the location six months before the area qualifies for sign(s);
- (7) Employee(s) shall be on site during normal working hours which are considered usual, normal, and or customary for that type activity; and
- (8) There shall be a frequency of operations which is considered usual, normal, and/or customary for that type commercial/industrial operation;
- (9) For the purpose of controlling outdoor advertising, none of the following activities shall be commercial or industrial:
 - (A) Outdoor advertising structures;
 - (B) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to temporary wayside fresh product stands;
 - (C) Transient or temporary activities;
 - (D) Activities not visible from the main traveled way;
 - (E) Activities more than 660 feet from the nearest edge of the right of way;
 - (F) Activities conducted in a building principally used as a residence;
 - (G) Railroad tracks and minor sidings;

- (H) Any outdoor advertising activity or any other business or commercial activity carried on in connection with an outdoor advertising activity.
- (10) Any sign erected using the criteria stipulated in Paragraph (a) of this Rule shall be removed at the owner's expense if any provision of Paragraph (a) of this Rule is violated or is no longer in existence within 24 months of the date of issuance of the permit.
- (b) Zoned Commercial or Industrial Areas. Those areas which are zoned for business, industry, commerce, or trade pursuant to a state or local zoning ordinance or regulation.
- (c) Unzoned Commercial or Industrial Areas:
- (1) Those areas which are not zoned by state or local law, regulation, or ordinance, and which are within 660 feet of the nearest edge of the right-of-way of the interstate or federal-aid primary system in which there are located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is actually conducted, and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Each side of the interstate and/or federal-aid primary route shall be considered separately.
- (2) All measurements shall begin from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activities, not from the property line of the activities, and shall be along the edge of pavement of the highway.
- (d) Traveled Way. The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.
- (e) Main-traveled Way. The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.
- (f) Sign. A sign is any outdoor sign, display, light, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or information contents of which is visible from any part of the main-traveled way of the interstate or federal-aid primary highway system.
- (g) Maintain. To allow to exist.
- (h) Scenic Area. A scenic area is any area of particular scenic beauty or historical significance as determined by the federal, state, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of scenic beauty.
- (i) Parkland. Any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site is a parkland.
- (j) Freeway. A freeway is a divided arterial highway for through traffic with full control of access.
- (k) Directional and Other Official Signs and Notices. Directional and other official signs and notices includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.
- (l) Official Signs and Notices. Official signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law for the purpose of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies may be considered official signs.
- (m) Public Utility Signs. Warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations are public utility signs.
- (n) Service Club and Religious Notices. Signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed eight square feet in area are service club and religious notices.
- (o) Public Service Signs. Public service signs are signs located on school bus stop shelters, which signs comply with the following:
- (1) identify the donor, sponsor or contributor of said shelters;
 - (2) contain safety slogans or messages, which shall occupy not less than 60 percent of the area of the sign;
 - (3) contain no other message;
 - (4) are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and

- (5) may not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.
- (p) Directional Signs. Signs containing directional information about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public are directional signs.
- (q) Controlled Access Highway. Highway on which access is permitted only at designated access points.
- (r) On-premise Sign. A sign which advertises the sale or lease of property upon which it is located or a sign which advertises activities conducted on the property upon which it is located.
- (s) Lease. An agreement, in writing, by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.
- (t) Blank Sign. A sign with no message.
- (u) Abandoned Sign. A sign in which the sign owner no longer has an interest. Absence of a valid lease is one indication of an abandoned sign.
- (v) Destroyed Sign. A sign no longer in existence due to factors other than vandalism or other criminal or tortious acts. An example of a destroyed sign would be a sign which has been completely blown down by the wind.
- (w) Sign Conforming by Virtue of the "Grandfather Clause". A sign legally erected prior to the effective date of the Outdoor Advertising Control Act in a zoned or unzoned commercial or industrial area which does not meet the standards for size, spacing and lighting passed at a later date.
- (x) Conforming Sign. A sign legally erected in a zoned or unzoned commercial or industrial area which meets all current standards for size, spacing and lighting.
- (y) Dilapidated Sign. An existing sign shall be considered dilapidated when it is in disrepair, shabby or neglected, when it fails to be in the same form as originally constructed, or when it fails to perform its intended function of conveying a message. Conditions of dilapidation shall include, but not be limited to, structural support failure, signs not held as originally constructed, panels or borders missing or falling off, intended messages cannot be interpreted by the motoring public, or signs which are overgrown by vegetation.
- (z) Visible commercial or industrial activity. An activity that is capable of being seen from the main-traveled way without visual aid by a person of normal visual acuity and which is recognizable year-round as a commercial or industrial activity.
- (aa) Sign location. A sign location, for permitting purposes, shall be measured at the closest 1/100th of a mile, in conformance with Department of Transportation methods of measurement for all state roads.

History Note: Statutory Authority G.S. 136-130;

Eff. July 1, 1978;

Amended Eff. December 1, 1990; January 1, 1984; September 4, 1981; June 15, 1981.

.0202 AGREEMENT

- (a) The Department of Transportation has entered into an agreement with the United States Department of Transportation relating to the control of outdoor advertising in areas adjacent to the interstate and federal-aid primary highway systems.
- (b) The purpose of this agreement is to ensure that North Carolina is in compliance with the provisions of Section 131(b) of Title 23, United States Code. To the extent that federal rules regarding outdoor advertising control in 23 CFR Part 750 Subpart B and Subpart G - Outdoor Advertising Control - are more restrictive than North Carolina Department of Transportation rules, those federal rules are expressly incorporated by reference as part of this Section.
- (c) Failure to comply with Section 131(b) of Title 23, United States Code would result in a reduction by amounts equal to 10 percent of the amounts which would otherwise be apportioned to North Carolina under Section 104 of Title 23, United States Code.
- (d) This agreement provides guidelines for the Department of Transportation to use in issuing orders to effectively control outdoor advertising, and applies to zoning, size, spacing and lighting of signs.
- (e) A copy of this agreement is on permanent file in the Office of the State Highway Administrator.

History Note: Statutory Authority G.S. 136-138; 143B-350(f);

Eff. July 1, 1978;

Amended Eff. December 1, 1990; June 15, 1981.

.0203 OUTDOOR ADVERTISING ON INTERSTATE AND FEDERAL-AID HWYS.

The following standards shall apply to the erection and maintenance of outdoor advertising signs in all zoned and unzoned commercial and industrial areas located within 660 feet of the nearest edge of the right of way of interstate and federal-aid primary highways. The standards shall not apply to those signs enumerated in G.S. 136-129(1),(2), and (3), which are directional and other official signs and notices, signs advertising the sale or lease of property upon which they are located, and signs which advertise activities conducted on the property upon which they are located:

(1) Size of Signs:

- (a) The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, supports, and other structural members.
- (b) The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.
- (c) The maximum size limitations shall apply to each side of a sign structure; the signs may be placed back-to-back, side-by-side; or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.
- (d) Side-by-side signs shall be structurally tied together to be considered as one sign structure.
- (e) V-type and back-to-back signs will not be considered as one sign if located more than 15 feet apart at their nearest points.
- (f) The height of the sign structure shall not exceed 50 feet as measured from the edge of pavement of the adjacent main traveled way.
- (g) Double-decking of sign faces so that one is on top of the other is prohibited.

(2) Spacing of Signs:

- (a) Interstate and Federal-aid Primary Highways. Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.
- (b) Interstate highways and freeways on the federal-aid primary system:
 - (i) No two structures shall be spaced less than 500 feet apart.
 - (ii) Outside of incorporated towns and cities, no structure may be located within 500 feet of an interchange, collector distributor, intersection at grade, safety rest area or information center. The 500 feet shall be measured from the point at which the pavement widens and the direction of measurement shall be along the edge of pavement away from the interchange, collector distributor, intersection at grade, safety rest area or information center, as shown in Exhibit 1A. In those interchanges where a quadrant does not have a ramp, the 500 feet for the quadrant without a ramp shall be measured along the outside edge of pavement for the interstate or freeway highway as follows:
 - (A) Where a route is bridged over the freeway or interstate highway, the 500 foot measurement shall begin on the outside edge of pavement of the freeway highway or interstate at a point directly below the edge of the bridge. The direction of measurement shall be along the edge of pavement away from the interchange, as shown in Exhibit 1B.
 - (B) Where a freeway or interstate highway is bridged over another route, the 500 foot measurement shall be made from the end of the bridge in the quadrant. The direction of measurement shall be along the edge of pavement away from the bridge, as shown in Exhibit 1C.
 - (C) Where the routes involved are both freeway or interstate routes, measurements on both routes will be made according to (1) and/or (2), whichever applies.

Should there be a situation where there is more than one point at which the pavement widens along each road within a quadrant, the measurement shall be made from the pavement widening which is furthest from the intersecting roadways.

(c) Non-freeway federal-aid primary highways:

- (i) Outside of incorporated towns and cities -- no two structures shall be spaced less than 300 feet apart.
- (ii) Within incorporated towns and cities -- no two structures shall be spaced less than 100 feet apart.
- (d) The foregoing provisions for the spacing of signs do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

- (e) Official and "on-premise" signs, as permitted under the provisions of G.S. 136-129(1) to (3), and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.
- (f) The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highways.
- (3) Lighting of Signs; Restrictions:
 - (a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.
 - (b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the interstate or federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
 - (c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.
 - (d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the state.
 - (e) Illumination shall not be added to nonconforming signs or signs conforming by virtue of the grandfather clause.

*History Note: Statutory Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. December 1, 1990; November 1, 1988.*

.0206 APPLICATIONS

When application is made for an outdoor advertising permit, the application shall be submitted with:

- (1) A memorandum of lease or other proof of interest in land where a sign is proposed to be constructed;
- (2) Right of entry from adjacent property owners to allow DOT personnel to enter upon property if removal of structure becomes necessary;
- (3) Statement from local zoning authority indicating the present zoning of parcel and date of last zoning, etc.;
- (4) Approval from local government if they regulate signs through building permits, etc.;
- (5) Certification from sign owner indicating there has been no misrepresentation of facts regarding application, etc.;
- (6) Applicable fee for permit.

*History Note: Statutory Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. December 1, 1990; June 15, 1981.*

.0207 FEES AND RENEWALS

(a) Initial and annual renewal fees shall be required to be paid by the owners of the outdoor advertising structures for each permit requested in order to defer the costs of the administrative and inspection expenses incurred by the Division of Highways of the Department of Transportation in administering the permit procedures.

(b) An initial nonrefundable fee of twenty dollars (\$20.00) per outdoor advertising structure shall be submitted with each application for a permit, and an annual nonrefundable renewal fee of fifteen dollars (\$15.00) per sign structure shall be paid by the owners of the outdoor advertising structures on April 15 of each year to the appropriate district engineer. The owners of outdoor advertising structures must return the information required under Paragraph (c) of this Rule with their annual renewal fees.

(c) The Division of Highways of the Department of Transportation shall, without request, send a statement to each owner of outdoor advertising structure(s) with valid permit for the annual renewal fee or fees and a renewal application. For a renewal to be approved, the renewal application must include:

- (1) Existing Sign Permits issued prior to March 1, 1990 - Retain existing permit renewal requirements of paying renewal fee upon receipt of invoice from Department.

- (2) Renewal of permit(s) which were issued on or after March 1, 1990 - If the lease or property interests and/or the right-of-entry agreements do not continue in full force and effect, the renewal application must include those documents as required under 19A NCAC 2E .0206(a).

History Note: Statutory Authority G.S. 136-130; 136-133;

Eff. July 1, 1978;

Amended Eff. December 1, 1990; July 1, 1986; January 1, 1983.

.0208 PERMIT AND PERMIT EMBLEM

(a) A permit along with a permit emblem shall be issued upon proper application, approval, and the payment of fees for lawful outdoor advertising structures.

(b) The erection of new outdoor advertising structures shall not commence until a permit and emblem has been issued. The outdoor advertising structure must be completely constructed and erected with the permit emblem affixed within 180 days from the date of issuance of the permit. During the 180 day period, the new outdoor advertising structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in the appropriate rules and regulations promulgated by the Board of Transportation.

(c) The permit emblem, which will have an identifying number, shall be placed on the outdoor advertising structure in such a position as to be visible and readable from the main traveled roadway of the adjacent highway.

History Note: Statutory Authority G.S. 136-130;

Eff. July 1, 1978;

Amended Eff. December 1, 1990.

.0210 REVOCATION OF PERMIT

Any valid permit issued for a lawful outdoor advertising structure shall be revoked by the appropriate district engineer for any one of the following reasons:

- (1) mistake of material facts by the issuing authority for which had the correct facts been made known, the outdoor advertising permit in question would not have been issued;
- (2) misrepresentations of material facts by the outdoor advertiser on the application for permit for outdoor advertising;
- (3) failure to pay annual renewal fees and/or provide the documentation required under Rule .0207(c) of this Section;
- (4) failure to construct the outdoor advertising structure and affix the permanent emblem within 180 days from the date of issuance of the outdoor advertising permit;
- (5) any alteration of an outdoor advertising structure for which a permit has previously been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act and the rules and regulations promulgated by the Board of Transportation pursuant thereto;
- (6) making alterations to a nonconforming sign or a sign conforming by virtue of the grandfather clause which would cause it to be other than substantially the same as it was on the date the sign became nonconforming, or a grandfather clause sign, except as provided under Rule .0203 (2)(A) of this Section, that enlarges a dimension of the sign facing, or that raises the height of the sign, changing the material of the sign structure's support, adding a pole or poles, adding illumination, or any other alteration of a nonconforming outdoor advertising structure.
- (7) failure to affix permanent permit emblem within 30 days after erection of the outdoor advertising structure;
- (8) unlawful destruction of trees or shrubs or other growth located on the right of way in order to increase or enhance the visibility of an outdoor advertising structure;
- (9) unlawful violation of the control of access on interstate, freeway, and other controlled access facilities;
- (10) failure to maintain a sign such that it remains blank for a period of 12 consecutive months;
- (11) failure to maintain a sign such that it reaches a state of dilapidation as defined in Rule .0201(y) of this Section;
- (12) abandonment, or destruction of a sign.

History Note: Statutory Authority G.S. 136-130; 136-134;

Eff. July 1, 1978;

Amended Eff. December 1, 1990.

.0211 NOTICE GIVEN FOR REFUSING TO ISSUE PERMIT

(a) Should the appropriate district engineer determine that a proposed outdoor advertising structure would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act or the rules and regulations promulgated thereto by the Department of Transportation, the district engineer shall refuse to issue a permit for that proposed outdoor advertising structure.

(b) When such noncompliance of the Outdoor Advertising Control Act or the rules and regulations promulgated thereto by the Department of Transportation has been determined, the district engineer shall so notify the owner of the proposed outdoor advertising structure in question by certified mail, return receipt requested, in the form of a letter setting forth the reasons why the proposed outdoor advertising structure in question does not comply and shall also return the application to the applicant.

(c) Permit(s) shall not be issued by the Department of Transportation for a period of five years at conforming sites where illegal cutting of vegetation has occurred. This includes sites where revocation of existing permit(s) have been upheld and signs have been removed, as well as conforming locations where illegal cutting occurs prior to receipt of an application for outdoor advertising permit(s).

(d) Application(s) shall be denied for new outdoor advertising structures at conforming locations where existing trees (defined as those trees four inches in diameter measured six inches from the ground) are of such density the site is not visible from the main travelway or will not be visible when the trees reach maturity.

*History Note: Statutory Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. December 1, 1990; June 15, 1981.*

.0212 NOTICE GIVEN FOR REVOKING PERMIT

(a) Should the appropriate district engineer determine that a particular outdoor advertising structure falls within one of the categories set out by Rule .0210 of this Section, the district engineer shall revoke the permit for that outdoor advertising structure.

(b) When such noncompliance has been determined, the district engineer shall so notify the owner of the outdoor advertising structure by certified mail, return receipt requested, in the form of a letter setting forth the reasons why the outdoor advertising structure in question does not comply. The letter notifying the owner of the outdoor advertising structure in question shall also state that because the structure is in violation of the provisions of the Outdoor Advertising Control Act or the rules and regulations promulgated thereto, the structure is unlawful and a nuisance and that if the structure is not removed or made to conform to the provisions of the act or the rules and regulations within 30 days after receipt of the letter, the Department of Transportation or its agents shall, at the expense of the owner, remove the nonconforming outdoor advertising.

(c) An outdoor advertising structure cannot be made to conform to the Outdoor Advertising Control Act when the permit is revoked under 19A NCAC 2E .0210 (2), (4) or (8) of this Section.

*History Note: Statutory Authority G.S. 136-130; 136-134;
Eff. July 1, 1978;
Amended Eff. December 1, 1990; June 15, 1981.*

SECTION .0600 - SELECTIVE VEGETATION REMOVAL POLICY

.0602 REQUESTS FOR PERMITS

(a) Applications for selective vegetation thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of the business or advertisement to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways.

(b) Selective vegetation thinning, pruning, or removal will be permitted only for the permittee's facilities adjacent to highway right of way at locations where such facilities have been constructed. The provisions will not be used to provide visibility to undeveloped property.

(c) Applications must be accompanied by a sketch showing the requested limits of the selective thinning, pruning, or removal of vegetation. For outdoor advertising displays, these limits shall be restricted to a maximum of 125 feet, in each direction, measured along the highway right of way line, from the center of the advertising display. For commercial, industrial, institutional and office facilities, the

limits of selective clearing or thinning shall be restricted to the area of right of way immediately adjacent to frontage property of the facility, but not to exceed 1,000 linear feet.

(d) Applications for permits for vegetation cutting to be performed on State Highway right of way must be accompanied by written authorization(s) by the underlying fee owner(s) of all property upon which cutting is to take place, provided that where the right of way was secured in fee simple by the Department, such authorization will not be required. The application must also be accompanied by written authorization of all owners of property abutting the area to be cut.

(e) The selective vegetation control request will be investigated on site by Maintenance and Landscape personnel and a representative of the applicant.

(f) If the application for vegetation cutting is for a site located within the corporate limits of a City or Town, local officials will be given the opportunity to review the application if the City or Town has previously advised the Division Engineer of their desire to review such applications.

*History Note: Filed as a Temporary Rule Eff. April 13, 1982,
for a Period of 48 Days to Expire on June 1, 1982;
Statutory Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. June 1, 1982;
Amended Eff. December 1, 1990; August 1, 1985; June 2, 1982.*

.0603 ISSUANCE OR DENIAL OF PERMIT

(a) Within 30 days following receipt of the application, the Division Engineer will approve or deny the application. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application will be denied by the Division Engineer if:

- (1) It requires removal of trees that were in existence before the business or advertisement was established. An existing tree shall be one that is four inches in diameter as measured six inches from the ground.
- (2) The application is for the opening of view to a sign or business which has been declared illegal or is currently involved in litigation.
- (3) It is determined that the facility or advertisement is not screened from view.
- (4) The application is for the opening of view to an outdoor advertising sign which was obscured from view at the time of erection of the sign.
- (5) Removal of vegetation will adversely affect the safety of the traveling public.
- (6) Trees, shrubs, or other vegetation of any sort were planted in accordance with a local, State, or Federal beautification project. (Exceptional conditions may dictate a replacement, relocation, trimming, or pruning of this planted material.)
- (7) Planting was done in conjunction with a designed noise barrier.
- (8) The applicant has not performed satisfactory work on previous requests under the provisions of this policy (this may not be cause for denial if the applicant engages a qualified firm to perform the work).
- (9) It involves opening of views to junkyards.
- (10) The application is contrary to ordinances or rules and regulations enacted by local government, within whose jurisdiction the work has been requested to be performed.

*History Note: Filed as a Temporary Rule Eff. April 13, 1982;
for a Period of 48 Days to Expire on June 1, 1982;
Statutory Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. June 1, 1982;
Amended Eff. December 1, 1990; August 1, 1985; June 2, 1982.*

.0607 TEMPORARY MORATORIUM

The temporary moratorium previously imposed on Section .0600 of this Subchapter is continued in effect until further action of the Board.

*History Note: Statutory Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. December 1, 1990.*

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

NOVEMBER 1990

AGENCY	ACTION TAKEN
<u>DEPARTMENT OF AGRICULTURE</u>	
2 NCAC 10G .0100 - .0500	Transferred and Recodified To 2 NCAC 48F .0100 - .0500 Eff. October 3, 1990
<u>DEPARTMENT OF STATE AUDITOR</u>	
4 NCAC 6 6C .0203	* Correction ** Amended
<u>DEPARTMENT OF CORRECTION</u>	
5 NCAC 2F .1001 - .1002	Amended
<u>OFFICES OF THE GOVERNOR/LIEUTENANT GOVERNOR</u>	
9 NCAC 2B Executive Order Number 124 Eff. September 18, 1990 Executive Order Number 125 Eff. September 18, 1990 Executive Order Number 126 Eff. September 18, 1990 Executive Order Number 127 Eff. October 29, 1990.	
<u>DEPARTMENT OF HUMAN RESOURCES</u>	
10 NCAC 3C .1901 - .1905 .1910 .1912 .1913 - .1914 .1915 - .1916 .1918 .1922 .1926 311 .0107 .0108 .0315	Temp. Amended Expires 02-28-91 Temp. Amended Expires 02-28-91 Temp. Amended Expires 02-28-91 Temp. Repealed Expires 02-28-91 Temp. Amended Expires 02-28-91 Temp. Amended Expires 02-28-91 Temp. Amended Expires 02-28-91 Temp. Repealed Expires 02-28-91 Temp. Amended Expires 02-28-91 Temp. Amended Expires 02-28-91

FINAL RULES

	.0505	Temp. Amended Expires 02-28-91
	.0507	Temp. Amended Expires 02-28-91
	.0508 - .0509	Temp. Repealed Expires 02-28-91
	.0510 - .0511	Temp. Amended Expires 02-28-91
	.0709	Temp. Amended Expires 02-28-91
	.1501	Temp. Amended Expires 02-28-91
	.1612	Temp. Amended Expires 02-28-91
3R	.0305	Amended
	.0317	Temp. Amended Expires 02-28-91
	.1100	* Correction
	.1113	Temp. Amended Expires 02-28-91
	.1115 - .1120	Temp. Amended Expires 02-28-91
	.2101 - .2109	Repealed
	.2113 - .2119	** Adopted
14K	.0403	Amended
14L	.0602 - .0613	Renumbered to .0604 - .0615
14L	.0602 - .0603	Adopted
14M	.0202	Amended
	.0303	** Amended
	.0402	Amended
44B	.0504	** Amended
	.0506	** Amended
4511	.0202	Amended

DEPARTMENT OF INSURANCE

11	NCAC	6A	.0702	Amended
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DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

14A	NCAC	10B	.0110	** Amended
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DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A	NCAC	2H	.1203	** Adopted
		3B	.0501	Amended
			.0901	Amended
			.0907	Amended
		10B	.0119	** Amended
		10F	.0363	Adopted
		10H	.0101 - .0109	** Amended
		13B	.1001 - .1005	** Adopted
		17A	.0104 - .0105	Adopted
			.0206 - .0208	Adopted
			.0306 - .0310	Adopted
			.0403 - .0404	Adopted
		17B	.0104 - .0105	Adopted
			.0207 - .0212	Adopted

FINAL RULES

		.0303 - .0304	Adopted
17C		.0204 - .0206	Adopted
17D		.0103	Adopted
		.0205	Adopted
21D		.0106 - .0107	Amended
		.0201 - .0202	Amended
		.0206	Amended
		.0304	Amended
		.0401	Amended
		.0408	Amended
		.0410	Amended
		.0602 - .0603	Amended
		.0703	Amended
		.0803	* Correction
		.0902 - .0903	Amended
		.0905 - .0906	Amended
		.0908	Amended
		.1001	Amended
		.1103 - .1104	Amended

DEPARTMENT OF PUBLIC EDUCATION

16	NCAC	6C .0312	** Amended
		6D .0105	Adopted

DEPARTMENT OF TRANSPORTATION

19A	NCAC	3D .0801	Amended
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DEPARTMENT OF STATE TREASURER

20	NCAC	1G .0104	Amended
		3 .0112	Amended
		.1001 - .1009	** Adopted

BOARD OF COSMETIC ART EXAMINERS

21	NCAC	14J	* Correction
		14K	* Correction
		14L	* Correction
		.0100 - .0200	* Correction

OFFICE OF STATE PERSONNEL

25	NCAC	1C .0215	Amended
		1D .0504	** Amended
		.0509	** Amended
		.0517	Amended
		.0610	Amended
		1E .0802 - .0803	** Amended
		.1101	Amended
		.1104 - .1105	Amended
		.1111 - .1112	** Adopted
		1I .1307 - .1314	Repealed
		.1315	Adopted
		1J .0610	** Amended
		.0901	** Amended
		1K .0502	Amended

FINAL RULES

1L .0100
.0201 - .0207

* Correction
** Adopted

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

<i>4 NCAC 3C .0201 - Establishment of Branch and Limited Svcs Facilities</i>	<i>ARRC Objection</i>	<i>7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/16/90</i>
<i>4 NCAC 3C .0202 - Branch Closing</i>	<i>ARRC Objection</i>	<i>7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/16/90</i>
<i>4 NCAC 3C .0901 - Books and Record</i>	<i>ARRC Objection</i>	<i>7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/16/90</i>
<i>4 NCAC 3C .1301 - Annual Vacation</i>	<i>ARRC Objection</i>	<i>7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/16/90</i>

Community Assistance

<i>4 NCAC 19L .0501 - Definition</i>	<i>ARRC Objection</i>	<i>7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/16/90</i>

Credit Union Division

<i>4 NCAC 6C .0203 - Fields of Membership</i>	<i>ARRC Objection</i>	<i>8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>9/20/90</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

<i>15A NCAC 18A .2117 - Water Sanitation and Quality</i>	<i>ARRC Objection</i>	<i>8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/23/90</i>
<i>15A NCAC 18A .2609 - Refrigeration: Thawing: and Preparation of Food</i>	<i>ARRC Objection</i>	<i>8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/23/90</i>
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<i>15A NCAC 13B .1104 - General Conditions</i>	<i>ARRC Objection</i>	<i>8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/23/90</i>
<i>15A NCAC 13B .1105 - Permit Required</i>	<i>ARRC Objection</i>	<i>8/16/90</i>
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<i>15A NCAC 13B .1107 - Scrap Tire Collection Site Operational Requirements</i>	<i>ARRC Objection</i>	<i>8/16/90</i>
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Wildlife Resources Commission

<i>15A NCAC 10H .0302 - Minimum Standards</i>	<i>ARRC Objection</i>	<i>9/20/90</i>
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HUMAN RESOURCES

AFDC

<i>10 NCAC 49C .0101 - Eligibility for Coverage</i>	<i>ARRC Objection</i>	<i>7/19/90</i>
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<i>10 NCAC 3R .2115 - Need for Services</i>	<i>ARRC Objection</i>	<i>9/20/90</i>
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<i>10 NCAC 44B .0506 - Room Restriction or Confinement</i>	<i>ARRC Objection</i>	<i>7/19/90</i>
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<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/23/90</i>

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Elementary and Secondary Education

<i>16 NCAC 6C .0312 - Certificate Suspension and Revocation</i>	<i>ARRC Objection</i>	<i>8/16/90</i>
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<i>16 NCAC 6D .0105 - Use of School Day</i>	<i>ARRC Objection</i>	<i>6/21/90</i>
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<i>18 NCAC 4 .0206 - Documents Not Specifically Provided For</i>	<i>ARRC Objection</i>	<i>6/21/90</i>
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18 NCAC 4 .0503 - Deceptively Similar and Distinguishable Names	ARRC Objection	6/21/90
18 NCAC 4 .0504 - Filing Fictitious/Assumed Name/Foreign Corporation	ARRC Objection	6/21/90
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18 NCAC 6 .1210 - Securities Exchgs/Auto Quotation Sys Approve/Admin	ARRC Objection	6/21/90
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25 NCAC 1B .0112 - Abstention	ARRC Objection	9/20/90
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25 NCAC 1L .0206 - Anti-Discrimination	ARRC Objection	9/20/90
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Local Government Commission

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20 NCAC 3 .1004 - Hearing Officer		
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This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 1B .0202(c) - REQUEST FOR DETERMINATION

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *High Point Regional Hospital, Inc., Petitioner v. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DIHR 0770).

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DIHR 0296).

10 NCAC 3R .0317(g) - WITHDRAWAL OF CERTIFICATE

Michael Rivers Morgan, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Autumn Corporation, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DIHR 0321 and 90 DIHR 0318).

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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